

study conducted at multiple centers in the United States examining joint space width loss with radiograph films in patients who were treated with glucosamine hydrochloride. The authors concluded that after two years of treatment with this supplement, the treatment did not demonstrate a clinically important difference in joint space width loss. Sawitzke et al., Glucosamine for Pain in Osteoarthritis: Why do Trial Results Differ?, Arthritis Rheum. 58:3183-3191 (2008).

d. In March 2009, Harvard Medical School published a study conclusively proving that the ingestion of glucosamine could not affect the growth of cartilage. The study took note of the foregoing 2006 and 2008 studies, which "cast considerable doubt" upon the value of glucosamine. The authors went on to conduct an independent study of subjects ingesting 1500 mg of glucosamine, and proved that only trace amounts of glucosamine entered the human serum, far below any amount that could possibly affect cartilage. Moreover, even those trace amounts were present only for a few hours after ingestion. The authors noted that a 1986 study had found no glucosamine in human plasma after ingestion of four times the usual 1500 mg of glucosamine chloride or sulphate. Silbert, Dietary Glucosamine Under Question, Glycobiology 19(6):564-567 (2009).

e. In April 2009, the Journal of Orthopaedic Surgery published an article entitled, "Review Article: Glucosamine." The article's authors concluded that, based on their literature review, there was "little or no

evidence" to suggest that glucosamine was superior to a placebo even in slowing down cartilage deterioration, much less rebuilding it. Kirkham, et al., Review Article: Glucosamine, Journal of Orthopaedic Surgery, 17(1): 72-6 (2009).

19. To date, there are only two studies purporting to claim that the ingestion of glucosamine can affect the growth or deterioration of cartilage, both sponsored by a glucosamine supplement manufacturer: Pavelka et. al. Glucosamine Sulfate Use and Delay of Progression of Knee Osteoarthritis, Arch. Intern. Med., 162: 2113-2123 (2002); Reginster et. al. Long-term Effects of Glucosamine Sulphate On Osteoarthritis Progress: A Randomised, Placebo-Controlled Clinical Trial, Lancet, 357: 251-6 (2001). As noted in the April 2009 Journal of Orthopaedic Surgery article, the methodologies in those studies had "inherently poor reproducibility," and even minor changes in posture by the subjects during scans could cause false apparent changes in cartilage. The authors of the Journal of Orthopaedic Surgery article explained the manufacturer-sponsored studies' findings by noting that "industry-sponsored trials report positive effects more often than do nonsponsored trials and more find pro-industry results."

20. There is no study that supports the claim that glucosamine, chondroitin and/or methylsulfonylmethane, either alone or in combination, will restore, rebuild, renew or rejuvenate joint cartilage that has broken down or worn away.

21. Rexall sells its Osteo Bi-Flex line of products in the United States as a dietary supplement in the United States. The Osteo Bi-Flex products are not regulated as a drug.

22. Rexall sells its Osteo Bi-Flex line of products without any competent and reliable scientific evidence that glucosamine, chondroitin and/or and methylsulfonylmethane will help to "renew cartilage." At no time has Rexall had any competent, reliable or scientific evidence to

support its claim that its Osteo Bi-Flex line of products will help “renew cartilage.” Rexall lacked a reasonable basis to represent to consumers that its Osteo Bi-Flex products help “renew cartilage,” and did not have a reasonable basis to make the express claim that its Osteo Bi-Flex products will help “renew cartilage.” It lacks adequate evidence to substantiate its claim that its Osteo Bi-Flex products help “renew cartilage,” and therefore lacks any reasonable basis for the claim that the products help “renew cartilage.”

23. Plaintiff has purchased Osteo Bi-Flex products. In April 2011, he purchased “Osteo Bi-Flex Glucosamine Chondroitin with 5-Loxin with MSM Hyaluronic Acid ‘Easy to Swallow Smooth Cap™,’” 144 coated caplets from BJ’s Wholesale Club. Prior to this purchase, he purchased “Osteo Bi-Flex Triple Strength 2 Per Day” approximately every thirty (30) days during the class period. He purchased most of the Osteo Bi-Flex products from Walmart or BJ’s Wholesale Club, and purchased the products for his personal use. The packages containing the Osteo Bi-Flex products that Plaintiff purchased all contained the statement that the product helps “renew cartilage.”

24. Plaintiff purchased the Osteo Bi-Flex products because he believed, based upon the packaging, that the products would help renew or rebuild the cartilage in his knee. When he purchased the Osteo Bi-Flex products, Plaintiff believed that they would help renew and rebuild the cartilage in his knee based upon the statements contained on the packages containing the products. His belief that the products would help “renew cartilage” in his knee was reasonable because Rexall, as a manufacturer and distributor of dietary supplements throughout the United States, has superior knowledge, skill and expertise than Plaintiff to appreciate the truth or falsity of the statement that the products help “renew cartilage.” And he reasonably relied upon the statement that the products would “renew cartilage” when he purchased the products.

25. Plaintiff would not have bought the Osteo Bi-Flex products if he had known that they would not help “renew” his cartilage.

26. The Osteo Bi-Flex products that Plaintiff purchased did not help renew his cartilage. Plaintiff’s cartilage did not renew as a result of his taking the Osteo Bi-Flex products.

CLASS ACTION ALLEGATIONS

27. Plaintiff seeks to be appointed as class representative of a class composed of and defined as follows:

All persons who bought any Osteo Bi-Flex product in Massachusetts, and did not resell it during the period from August 10, 2007 through the present. Excluded from the Class are the Defendant and any Judge presiding over this matter and the members of his or her immediate family. Also excluded from this class are the legal representatives, heirs, successors and attorneys of any excluded person or entity, and any person acting on behalf of any excluded person or entity.

28. This action is appropriately suited for a class action. Plaintiff is informed, believes and thereon alleges that the Class is sufficiently numerous, such that a class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Massachusetts purchasers of the Osteo Bi-Flex products is impractical.

29. This action involves questions of law and fact common to the Class. In marketing the Osteo Bi-Flex products, Defendant engaged in a systematic course of misrepresenting the products to Massachusetts consumers. Such common issues of law and fact include but are not limited to:

- a. Whether the representation that Osteo Bi-Flex products help “renew cartilage” was and is likely to mislead consumers;
- b. Whether failing to disclose that Osteo Bi-Flex products would not promote renewal of cartilage was likely to mislead consumers;
- c. Whether Defendant made false or misleading representations regarding the effectiveness of the Osteo Bi-Flex products;

- d. Whether Defendant represented that the Osteo Bi-Flex products have benefits which they do not have;
- e. Whether Defendant represented that the Osteo Bi-Flex products were of a particular standard or quality when they were not;
- f. Whether Defendant advertised the Osteo Bi-Flex products with intent not to sell it as advertised;
- g. Whether, as a result of Defendant's misconduct, the Class is entitled to equitable relief, including restitution and injunctive relief;
- h. Whether the Class obtained the benefit of their bargain in purchasing the Osteo Bi-Flex products;
- i. Whether Defendant was unjustly enriched in collecting money from sales of the Osteo Bi-Flex products; and
- j. Whether, as a result of Defendant's misconduct, the Class is entitled to damages.

30. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and available remedies.

31. Plaintiff's claims are typical of the claims of members of the Class, and Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff purchased Osteo Bi-Flex products, and suffered an injury-in-fact as a result of Defendant's conduct, as did all Class members. Plaintiff's interests are coincident with and not antagonistic to those of the other members of the Class. Plaintiff is represented by counsel who is competent and experienced in the prosecution of consumer class action litigation.

32. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated purchasers of the Osteo Bi-Flex products to adjudicate simultaneously their common claims in a

single forum in an efficient manner, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many members of the Class who could not afford individually to litigate the claims pleaded in this Complaint. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
(Violations of Unfair Trade Practices Act, Mass. Gen. Laws ch. 93A)

33. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 32.

34. Through their conduct described above, including but not limited to breaching the express warranty that the Osteo Bi-Flex products help “renew cartilage,” Defendant has engaged in deceptive acts and practices in violation of the Massachusetts Unfair Trade Practices Act, Mass. Gen. Laws ch. 93A §§ 2 et seq. (“MUTPA”), the stated terms and intent of which is to protect consumers from unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.

35. Plaintiff satisfied the demand requirement set forth in Mass. Gen. Law. Ch 93A §9(3). Plaintiff sent a written demand letter to Defendant on May 12, 2011, which was received by Defendant, and the claim asserted herein has not been compromised or adjusted.

36. Representing that the Osteo Bi-Flex products help “renew cartilage” when there is not competent or reliable scientific evidence substantiating that claim is deceptive, and has the capacity, tendency and effect of deceiving reasonable consumers who purchase the products. Reasonable consumers would believe that the Osteo Bi-Flex products help renew cartilage, based upon Defendant’s misrepresentations to that effect.

37. Defendant knew, or should have known, that the representation that its Osteo Bi-Flex products help “renew cartilage” was not substantiated by competent and reliable scientific evidence.

38. Defendant made, and makes, the representation that its Osteo Bi-Flex products help “renew cartilage” with the intent to induce consumers, and members of the class sought herein, to purchase the products by causing them to rely on the representation that the products will help “renew cartilage.”

39. Defendants’ unfair or deceptive practices were a willing and knowing violation of MUTPA.

40. Plaintiff and the Class have suffered an ascertainable loss of money or property as a result of Defendant’s actions. Plaintiff and the Class have been damaged in the amount of the purchase prices for the Osteo Bi-Flex products that they paid, or, in the alternative, have been damaged by paying more for the Osteo Bi-Flex products that they purchased than for other products containing the same or similar ingredients that do not represent or promote that they will help “renew cartilage.”

41. By reason of the foregoing, Defendant has violated MUTPA and is liable to Plaintiff and the Class, pursuant to Mass. Gen. Laws ch. 93A §§ 2 et seq., for the damages that they have suffered as a result of Defendant’s actions, the amount of such damages to be determined at trial but not less than \$25.00 per consumer purchase, plus trebling and attorneys’ fees.

SECOND CAUSE OF ACTION
(Breach of Express Warranty)

42. Plaintiff hereby realleges, and incorporates by reference as though set forth fully herein, the allegations contained in Paragraphs 1 through 41.

43. Plaintiff and each member of the Class formed a contract with Defendant at the time Plaintiff and the other members of the Class purchased the Osteo Bi-Flex products. The terms of that contract include the promises and affirmations of fact made by Defendant on its product labels. The product labeling constitutes an express warranty which became part of the basis of the bargain. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

44. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing a product which could provide the promised benefits as described above.

45. As a result of Defendant's breach of its contract and warranties, Plaintiff and the Class have been damaged in the amount of the purchase price of the Osteo Bi-Flex products.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that the Court enter judgment against Defendant as follows:

1. Certifying this action as a class action as soon as practicable, with a class as defined above;
2. On Plaintiff's First Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, trebled;

3. On Plaintiff's Second Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;
4. Awarding Plaintiff and the Class interest, costs and attorneys' fees; and
5. Awarding Plaintiff and the Class such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure Rule 38, Plaintiff hereby demands a trial by jury.

Dated: White Plains, New York
January 25, 2012

Respectfully Submitted,

/s/ Peter N. Freiberg

D. Gregory Blankinship, BBO No. 655430
Jeffrey I. Carton (Admitted *Pro Hac Vice*)
Peter N. Freiberg (Admitted *Pro Hac Vice*)
MEISELMAN, DENLEA, PACKMAN,
CARTON & EBERZ P.C.
1311 Mamaroneck Avenue
White Plains, New York 10605
Telephone: (914) 517-5000
Facsimile: (914) 517-5055
gblankinship@mdpcelaw.com
jcarton@mdpcelaw.com
pfreiberg@mdpcelaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on today's date.

/s/ Peter N. Freiberg

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN (*To be admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (203111)
LINDSEY M. GOMEZ-GRAY (*To be admitted Pro Hac Vice*)
2901 N. Central Ave., Suite 1000
Phoenix, AZ 85012
eryan@bffb.com
psyverson@bffb.com
lgomez-gray@bffb.com
Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
TODD D. CARPENTER (234464)
600 W. Broadway, Suite 900
San Diego, California 92101
tcarpenter@bffb.com
Telephone: 619-756-6978

FUTTERMAN HOWARD ASHLEY
& WELTMAN, P.C.
STEWART WELTMAN (*To be admitted Pro Hac Vice*)
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 60603
SWELTMAN@FUTTERMANHOWARD.COM
Telephone: 312-427-3600

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CECILIA LINARES, On Behalf of Herself
and All Other Similarly Situated California
Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: **'11CV2547 MMARBB**

CLASS ACTION

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§1750 *et seq.*; and
2. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiff Cecilia Linares ("Plaintiff"), by and through her attorneys, brings this
2 action on behalf of herself and all others similarly situated against Defendant Costco
3 Wholesale Inc. ("Costco" or "Defendant"), and alleges as follows:

4 **NATURE OF ACTION**

5 1. Defendant markets, sells and distributes the Kirkland Signature^{TM1}
6 Glucosamine line of joint health dietary supplements.² Through an extensive,
7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
8 claims that its Kirkland Glucosamine products help improve joint mobility, rebuild
9 cartilage and improve joint function for all joints in the human body, for adults of all ages
10 and for all manner and stages of joint related ailments. For example, on each and every
11 Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently
12 states that Kirkland Glucosamine is "Clinically Proven Effective" for "optimum
13 mobility" and "as a building block for healthy cartilage" and that "two tablets per day
14 deliver" these benefits, as well as "nourishes JOINT and CONNECTIVE TISSUE" and
15 "supports JOINT CUSHIONING" (hereafter referred to as the "joint renewal, mobility
16 and rejuvenation" representations). On each and every Kirkland Glucosamine and MSM
17 product label and/or package, Defendant makes similar joint renewal, mobility and
18 rejuvenation claims and also promises that "noticeable improvement in flexibility and
19 range of motion should be expected after taking this supplement as directed on a
20 consistent basis." However, the Kirkland Glucosamine products do not benefit or
21 promote joint renewal, mobility and rejuvenation. Clinical cause and effect studies have
22 found no causative link between the ingredients in the Kirkland Glucosamine products

23
24 ¹ Kirkland SignatureTM is Costco's store brand, also known as its "own-brand", "house
25 brand", or "private label". It is available exclusively at Costco's website and Costco
26 warehouses and is trademarked by the company. Kirkland SignatureTM is one of the most
27 successful brands in the country.

28 ² The Kirkland SignatureTM Glucosamine line of joint health dietary supplements include:
(1) Kirkland SignatureTM Extra Strength Glucosamine Chondroitin Sulfate ("Kirkland
Glucosamine Chondroitin"); and (2) Kirkland SignatureTM Extra Strength Glucosamine
HCL and MSM ("Kirkland Glucosamine and MSM") (collectively, "Kirkland
Glucosamine" or the "Products").

1 and joint renewal, mobility and rejuvenation. Defendant also does not have competent
2 and reliable scientific evidence to support its representations. Defendant's representations
3 are false, misleading, and reasonably likely to deceive the public.

4 2. Despite the deceptive nature of Defendant's representations, Defendant
5 conveyed and continues to convey its deceptive joint renewal, mobility and rejuvenation
6 representations through a variety of media, including in its print advertisements, as well
7 as on its Product packages and labeling, website and online promotional materials. The
8 only reason a consumer would purchase the Kirkland Glucosamine products is to obtain
9 the advertised joint health benefits, which Kirkland Glucosamine does not provide.

10 3. Defendant's marketing and advertising campaign is designed to cause
11 consumers to buy Kirkland Glucosamine. Defendant's deceptive marketing and
12 advertising campaign has succeeded. Estimated sales of joint dietary supplements
13 including Kirkland Glucosamine approached \$820 million in 2006.³

14 4. Plaintiff brings this action on behalf of herself and other similarly situated
15 California consumers who have purchased the Products to halt the dissemination of this
16 false and misleading advertising message, correct the false and misleading perception it
17 has created in the minds of consumers, and obtain redress for those who have purchased
18 the Kirkland Glucosamine products. Plaintiff alleges violations of the Consumers Legal
19 Remedies Act, the Unfair Competition Law, and Breach of Express Warranty created by
20 Defendant's advertising, including false labeling.

21 **JURISDICTION AND VENUE**

22 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which there are in excess of 100 class members and
25 the members of the Class are citizens of a state different from Defendant.

26
27 ³ 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last
visited Oct. 3, 2011).

1 6. This Court has personal jurisdiction over Defendant because Defendant is
2 authorized to do and does conduct business in California. Defendant has marketed,
3 promoted, distributed, and sold the Kirkland Glucosamine products in California, and
4 Defendant has sufficient minimum contacts with this State and/or sufficiently avails itself
5 of the markets in this State through its promotion, sales, and marketing within this State
6 to render the exercise of jurisdiction by this Court permissible.

7 7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)
8 because a substantial part of the events or omissions giving rise to Plaintiff's claims
9 occurred while she resided in this judicial district. Venue is also proper under 18 U.S.C.
10 § 1965(a) because Defendant transacts substantial business in this District.

11 **PARTIES**

12 8. Plaintiff Cecilia Linares resides in Imperial, California. Towards the end of
13 2010, Plaintiff Linares was exposed to and saw Defendant's representations by reading
14 the front, back and sides of the Kirkland Glucosamine Chondroitin label at a Costco store
15 in El Centro, California. After reading the label, Plaintiff Linares purchased the Kirkland
16 Glucosamine Chondroitin product to relieve her joint pain and in so doing relied on every
17 single one of Defendant's renewal, mobility and rejuvenation representations. The
18 Kirkland Glucosamine Chondroitin Plaintiff purchased and took as directed did not help
19 improve joint mobility, rebuild cartilage or improve joint function as represented. As a
20 result, Plaintiff suffered injury in fact and lost money. She would not have purchased the
21 product had she known it did not provide the advertised joint health benefits.

22 9. Defendant Costco Wholesale Inc., is a public corporation incorporated
23 under the laws of the state of Washington. Defendant's corporate headquarters is located
24 at 999 Lake Drive, Issaquah, WA 98027. Defendant distributes, markets, and sells the
25 Kirkland Glucosamine products to tens of thousands of consumers in California.

26 //

27 //

FACTUAL ALLEGATIONS

The Kirkland Glucosamine Products

10. Since 2001, Costco has distributed, marketed, and sold the Kirkland Signature™ line of joint dietary supplements. These products include: (1) Kirkland Signature™ Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland Signature™ Extra Strength Glucosamine HCL and MSM.

11. The Kirkland Glucosamine products are sold online and in Costco stores statewide. The Kirkland Glucosamine and MSM product is available in 375 count bottles, retailing for approximately \$18. The Kirkland Glucosamine Chondroitin product is available in 220 count bottles, retailing for approximately \$25. The following are screen shots of the Kirkland Glucosamine products:



12. Since the Products' launch, Costco has consistently conveyed the message to consumers throughout California that the Kirkland Glucosamine products, with their "extra strength" formulas are clinically proven to deliver "optimum mobility" and will protect and build cartilage. Defendant's renewal, mobility and rejuvenation representations are false, misleading and deceptive.

13. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient in both Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The

1 Products' labeling and packaging states the benefits associated with taking glucosamine
2 hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and
3 other connective tissues, which are needed for healthy structure and function of joints."
4 There is no competent and reliable scientific evidence that taking glucosamine—let alone
5 through oral administration—results in the body metabolizing it into something that
6 builds cartilage or improves joint structure or function. In fact, clinical cause and effect
7 studies have found no causative link between glucosamine hydrochloride
8 supplementation and joint renewal, mobility or rejuvenation.

9 14. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex
10 carbohydrate found in the body's connective tissues. On the Product's labeling and
11 packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and
12 serves as a building block for healthy new cartilage." There is no competent and reliable
13 scientific evidence that taking chondroitin—let alone through oral
14 administration—results in the body metabolizing it into something that assists in building
15 joint cartilage. Clinical cause and effect studies have found no causative link between
16 chondroitin supplementation and joint renewal, mobility or rejuvenation.

17 15. The Methylsulfonylmethane ("MSM") found in Kirkland Glucosamine and
18 MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee,
19 and milk. On the Product's labeling and packaging, Defendant claims that MSM "is a
20 necessary component that works in conjunction with Glucosamine to provide the building
21 blocks of collagen, an important component of healthy joints and connective tissue.
22 Clinical research shows MSM increases glucosamine's effectiveness." There is no
23 competent and reliable scientific evidence that taking MSM—let alone through oral
24 administration—results in the body metabolizing it into something that builds cartilage or
25 improves joint structure or function, or makes glucosamine work more effectively.
26 Clinical cause and effect studies have found no causative link between MSM
27 supplementation and joint renewal, mobility or rejuvenation.

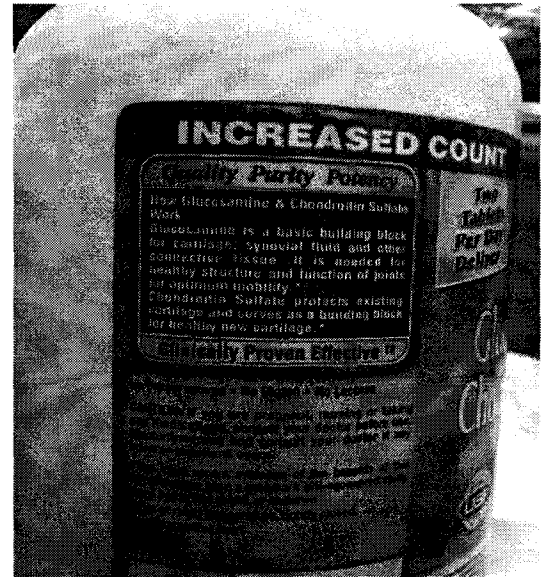
1 16. The Kirkland Glucosamine Chondroitin bottle references one study
2 purportedly supporting Defendant's "Clinically Proven Effective" representation. Other
3 than referencing the study sponsor, no other identifying information is included. The
4 referenced NIH study is not competent and reliable scientific support for Defendant's
5 representations. The NIH sponsored study did not examine, let alone find, that
6 glucosamine and chondroitin rebuild cartilage, nourish joint and connective tissue or
7 support joint cushioning. Defendant's citation to this study as support for its joint
8 renewal, mobility and rejuvenation representations constitutes further deceptive and
9 misleading conduct, in as much as the study is not competent and reliable evidence of
10 efficacy.

11 17. In fact, numerous clinical cause and effect studies have found no causative
12 link between any of the primary active ingredients in the Kirkland Glucosamine products
13 alone, or in combination, and joint renewal, mobility and rejuvenation. Nevertheless,
14 Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an
15 effective joint treatment—let alone an effective treatment for *all* joints in the human
16 body, for adults of *all* ages and for *all* manner and stages of joint related ailments —
17 prominently claims on the Products' packaging and labeling that Kirkland Glucosamine,
18 with its "extra strength" formula, will "deliver" "optimum joint mobility", rebuild
19 cartilage and improve joint function. Front, back and side shots of the two Kirkland
20 Glucosamine product labels appear as follows:

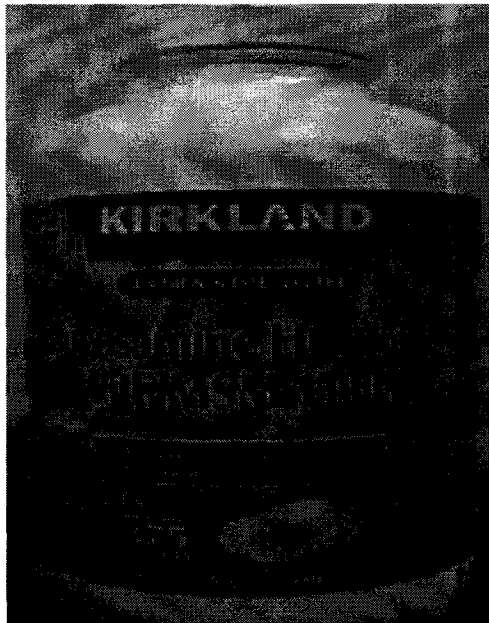
FRONT



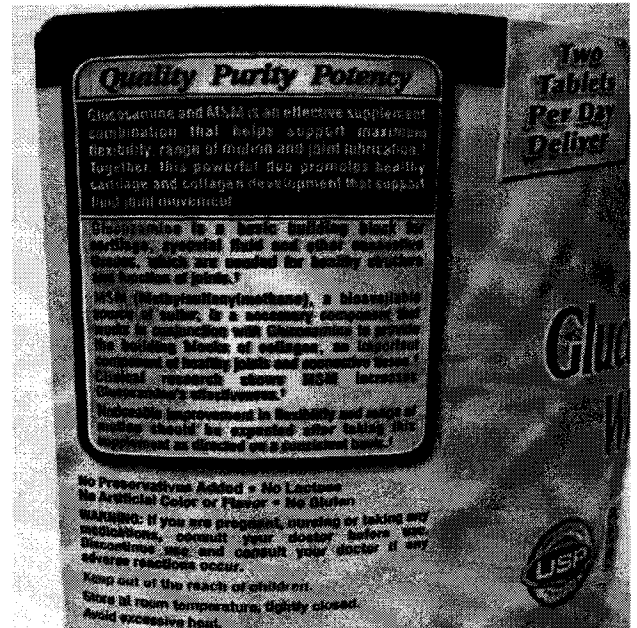
LEFT SIDE



FRONT



LEFT SIDE



18. Defendant did not and does not have competent and reliable scientific evidence that any of the ingredients in its Kirkland Glucosamine products taken alone or in combination benefit, improve or promote joint renewal, mobility or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Kirkland Glucosamine products and the prevention or improvement of joint

1 degeneration or other joint ailments. Defendant's renewal and rejuvenation
2 representations are false and misleading and reasonably likely to deceive the average
3 consumer.

4 ***The impact of Defendant's wrongful conduct***

5 19. Despite the lack of competent and reliable scientific evidence and
6 numerous clinical studies that have found no causative link between the ingredients in the
7 Kirkland Glucosamine products and joint renewal, mobility or rejuvenation, Defendant
8 continues to unequivocally claim that its Kirkland Glucosamine products are an effective
9 treatment for improving joint renewal, mobility and rejuvenation in all adults.

10 20. As the distributor of the Kirkland Glucosamine products, Defendant
11 possesses specialized knowledge regarding the content and effects of the ingredients
12 contained in its Kirkland Glucosamine products and is in a superior position to learn of
13 the effects—and has learned of the effects—its Products have on consumers.

14 21. Specifically, Defendant affirmatively misrepresented that the Kirkland
15 Glucosamine products, with their "extra strength formula", are clinically proven to
16 provide "Optimum JOINT HEALTH & MOBILITY", "Help[] Build CARTILAGE",
17 "Nourish[] JOINT and CONNECTIVE tissue" and "Support[] JOINT CUSHIONING".
18 Having made these affirmative misrepresentations, Defendant failed to disclose that well-
19 conducted, clinical cause-and-effect studies have found no causative relationship between
20 the product ingredients and the prevention or improvement of joint degeneration or other
21 related ailments and Defendant has no competent and reliable scientific evidence that its
22 Kirkland Glucosamine products are effective in helping provide joint renewal, mobility
23 or rejuvenation as represented.

24 22. Notwithstanding these deceptive representations and material omissions,
25 Defendant conveyed and continues to convey one uniform message: Kirkland
26 Glucosamine, with its "extra strength formula", is clinically proven to provide "Optimum
27 JOINT HEALTH & MOBILITY", "Help[] Build CARTILAGE", "Nourish[] JOINT and
28

1 CONNECTIVE tissue” and “Support[] JOINT CUSHIONING” for all joints in the
2 human body, for adults of all ages and for all manner and stages of joint related ailments..

3 23. Plaintiff and Class members have been and will continue to be deceived or
4 misled by Defendant’s deceptive joint renewal, mobility and rejuvenation
5 representations. Plaintiff purchased and consumed the Product during the Class period
6 and in doing so, read and considered the Product label and based her decision to buy the
7 Product on the joint renewal, mobility and rejuvenation representations. Defendant’s
8 deceptive representations and omissions were a material factor in influencing Plaintiff’s
9 decision to purchase and consume the Product. Plaintiff would not have purchased the
10 Product had she known that Defendant’s representations were false and misleading, that
11 Defendant did not possess competent and reliable scientific evidence to support its joint
12 renewal, mobility and rejuvenation representations, and that clinical cause-and-effect
13 studies have found no causative link between the ingredients in Kirkland Glucosamine
14 and joint renewal, mobility or rejuvenation.

15 24. As a result, Plaintiff and the Class members have been damaged in their
16 purchases of these Products and have been deceived into purchasing Products that they
17 believed, based on Defendant’s representations, were proven to be effective in improving
18 joint mobility, rebuilding cartilage and improving joint function when, in fact, they are
19 not.

20 25. Defendant, by contrast, reaped enormous profits from its false marketing
21 and sale of these Products.

22 **CLASS DEFINITION AND ALLEGATIONS**

23 26. Plaintiff brings this action on behalf of herself and all other similarly
24 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
25 Rules of Civil Procedure and seeks certification of the following Class:

26 All California residents who, within the applicable statute of
27 limitations, purchased Kirkland Signature™ Extra Strength
28 Glucosamine Chondroitin Sulfate and/or Kirkland Signature™

1 Extra Strength Glucosamine with MSM.

2 Excluded from the Class are Defendant, its parents,
3 subsidiaries, affiliates, officers and directors, and those who
4 purchased the Kirkland Glucosamine products for the purpose
of resale.

5 27. Members of the Class are so numerous and geographically dispersed that
6 joinder of all Class members is impracticable. Plaintiff is informed and believes, and on
7 that basis alleges, that the proposed Class contains many thousands of members. The
8 precise number of Class members is unknown to Plaintiff.

9 28. Common questions of law and fact exist as to all members of the Class and
10 predominate over questions affecting only individual Class members. The common legal
11 and factual questions include, but are not limited to, the following:

- 12 • Whether the claims discussed herein that Defendant made about the
13 Products were or are misleading, or reasonably likely to deceive;
- 14 • Whether Defendant's alleged conduct violates public policy;
- 15 • Whether the alleged conduct constitutes violations of the laws
16 asserted herein;
- 17 • Whether Defendant engaged in false and misleading advertising;
- 18 • Whether Plaintiff and Class members have sustained monetary loss
19 and the proper measure of that loss;
- 20 • Whether Plaintiff and Class members are entitled to restitution,
21 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
- 22 • Whether Plaintiff and Class members are entitled to an award of
23 compensatory damages.

24 29. Plaintiff's claims are typical of the claims of the members of the Class
25 because, *inter alia*, all Class members were injured through the uniform misconduct
26 described above, were subject to Defendant's deceptive joint renewal, mobility and
27 rejuvenation representations accompanying each and every bottle of the Kirkland
28

1 Glucosamine products which include the same primary active ingredient – glucosamine
2 hydrochloride. Plaintiff is advancing the same claims and legal theories on behalf of
3 herself and all members of the Class.

4 30. Plaintiff will fairly and adequately represent and protect the interests of the
5 members of the Class. Plaintiff has retained counsel competent and experienced in both
6 consumer protection and class litigation.

7 31. A class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy. The expense and burden of individual
9 litigation would make it impracticable or impossible for proposed Class members to
10 prosecute their claims individually. It would thus be virtually impossible for the Class,
11 on an individual basis, to obtain effective redress for the wrongs done to them.
12 Furthermore, even if Class members could afford such individualized litigation, the court
13 system could not. Individualized litigation would create the danger of inconsistent or
14 contradictory judgments arising from the same set of facts. Individualized litigation
15 would also increase the delay and expense to all parties and the court system from the
16 issues raised by this action. By contrast, the class action device provides the benefits of
17 adjudication of these issues in a single proceeding, economies of scale, and
18 comprehensive supervision by a single court, and presents no unusual management
19 difficulties under the circumstances here.

20 32. In the alternative, the Class also may be certified because Defendant has
21 acted or refused to act on grounds generally applicable to the Class thereby making
22 appropriate final declaratory and/or injunctive relief with respect to the members of the
23 Class as a whole.

24 33. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
25 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
26 and prevent Defendant from engaging in the acts described, and requiring Defendant to
27 provide full restitution to Plaintiff and Class members.
28

34. Unless a Class is certified, Defendant will retain monies received as a result of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

COUNT I
Violation of Business & Professions Code §17200, et seq.

35. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

36. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class.

37. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendant's conduct because she purchased Kirkland Glucosamine in reliance on Defendant's joint renewal, mobility and rejuvenation representations detailed above, but did not receive a product that provides joint renewal, mobility or rejuvenation.

38. The Unfair Competition Law, Business & Professions Code §17200, *et seq.* (“UCL”), prohibits any “unlawful,” “fraudulent” or “unfair” business act or practice and any false or misleading advertising. In the course of conducting business, Defendant committed unlawful business practices by, *inter alia*, making the representations (which also constitutes advertising within the meaning of §17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

39. Plaintiff and the Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

40. Defendant's actions also constitute "unfair" business acts or practices

1 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
2 misrepresented and omitted material facts regarding its Kirkland Glucosamine labels and
3 packaging, and thereby offended an established public policy, and engaged in immoral,
4 unethical, oppressive, and unscrupulous activities that are substantially injurious to
5 consumers.

6 41. As stated in this Complaint, Plaintiff alleges violations of consumer
7 protection, unfair competition and truth in advertising laws, resulting in harm to
8 consumers. Defendant's acts and omissions also violate and offend the public policy
9 against engaging in false and misleading advertising, unfair competition and deceptive
10 conduct towards consumers. This conduct constitutes violations of the unfair prong of
11 Business & Professions Code §17200, *et seq.*

12 42. There were reasonably available alternatives to further Defendant's
13 legitimate business interests, other than the conduct described herein.

14 43. Business & Professions Code §17200, *et seq.*, also prohibits any
15 "fraudulent business act or practice."

16 44. Defendant's actions, claims, nondisclosures and misleading statements, as
17 more fully set forth above, were also false, misleading and/or likely to deceive the
18 consuming public within the meaning of Business & Professions Code §17200, *et seq.*

19 45. Plaintiff and other members of the Class have in fact been deceived as a
20 result of their reliance on Defendant's material representations and omissions, which are
21 described above. This reliance has caused harm to Plaintiff and other members of the
22 Class who each purchased Defendant's Kirkland Glucosamine products. Plaintiff and the
23 other Class members have suffered injury in fact and lost money as a result of these
24 unlawful, unfair, and fraudulent practices.

25 46. As a result of its deception, Defendant has been able to reap unjust revenue
26 and profit.

27 47. Unless restrained and enjoined, Defendant will continue to engage in the
28

1 above-described conduct. Accordingly, injunctive relief is appropriate.

2 48. Plaintiff, on behalf of herself and all others similarly situated, and the
3 general public, seeks restitution and disgorgement of all money obtained from Plaintiff
4 and the members of the Class collected as a result of unfair competition, an injunction
5 prohibiting Defendant from continuing such practices, corrective advertising and all other
6 relief this Court deems appropriate, consistent with Business & Professions Code
7 §17203.

8 **COUNT II**
Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

9 49. Plaintiff re-alleges and incorporates by reference the allegations contained
10 in the paragraphs above as if fully set forth herein.

11 50. Plaintiff Cecilia Linares brings this claim individually and on behalf of the
12 Class.

13 51. This cause of action is brought under the Consumers Legal Remedies Act,
14 California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by
15 California Civil Code §1761(d). Defendant’s Kirkland Glucosamine products are goods
16 within the meaning of the Act.

17 52. Defendant violated and continues to violate the Act by engaging in the
18 following practices proscribed by California Civil Code §1770(a) in transactions with
19 Plaintiff and the Class which were intended to result in, and did result in, the sale of
20 Defendant’s Kirkland Glucosamine products:

21 (5) Representing that [the Kirkland Glucosamine products have] . . .
22 characteristics, . . . uses [or] benefits . . . which [they] do not have.

23 * * *

24 (7) Representing that [the Kirkland Glucosamine products are] of a particular
25 standard, quality or grade, . . . if [they are] of another.

26 * * *

27 (9) Advertising goods . . . with the intent not to sell them as advertised.
28

* * *

(16) Representing that [the Kirkland Glucosamine products have] been supplied in accordance with a previous representation when [they have] not.

53. Defendant violated the Act by representing and failing to disclose material facts on the Kirkland Glucosamine product labels and packaging, as described above, when it knew, or should have known, that the representations were unsubstantiated, were contrary to several clinical cause and effect studies finding the ingredients in all Kirkland Glucosamine products to be inefficacious, were false and misleading and that the omissions were of material facts they were obligated to disclose.

54. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

55. Pursuant to §1782 of the Act, Plaintiff notified Defendant in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act. A copy of the letter is attached hereto as Exhibit A.

56. If Defendant fails to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to add claims for actual, punitive and statutory damages, as appropriate.

57. Defendant's conduct is malicious, fraudulent and wanton, and provides misleading information.

58. Pursuant to §1780(d) of the Act, attached hereto as Exhibit B is the affidavit showing that this action has been commenced in the proper forum.

COUNT III
Breach of Express Warranty

59. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

60. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class.

61. Defendant expressly warranted on each and every box of Kirkland Glucosamine that the Products help to provide "Optimum JOINT HEALTH & MOBILITY", "Help[] Build CARTILAGE", "Nourish[] JOINT and CONNECTIVE tissue" and "Support[] JOINT CUSHIONING". These joint renewal, mobility and rejuvenation statements made by Defendant are affirmations of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promises. Plaintiff read and placed importance on Defendant's joint renewal, mobility and rejuvenation representations.

62. All conditions precedent to Defendant's liability under this contract have been performed by Plaintiff and the Class.

63. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing Products that could provide the benefits described above which was the only reason Plaintiff and Class members purchased the Kirkland Glucosamine products.

64. As a result of Defendant's breach of its warranty, Plaintiff and Class members have been damaged in the amount of the purchase price of the Kirkland Glucosamine products they purchased.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

A. Certifying the class as requested herein;

B. Awarding Plaintiff and the proposed Class members damages;

- 1 C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff
2 and the proposed Class members;
- 3 D. Awarding declaratory and injunctive relief as permitted by law or equity,
4 including enjoining Defendant from continuing the unlawful practices as set
5 forth herein, and directing Defendant to identify, with court supervision,
6 victims of its conduct and pay them restitution and disgorgement of all
7 monies acquired by Defendant by means of any act or practice declared by
8 this Court to be wrongful;
- 9 E. Ordering Defendant to engage in a corrective advertising campaign;
- 10 F. Awarding attorneys' fees and costs; and
- 11 G. Providing such further relief as may be just and proper.

12 **JURY DEMAND**

13 Plaintiff demands a trial by jury on all issues so triable.

14
15 DATED: November 2, 2011

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC

17 By: s/ Patricia N. Syverson
18 ELAINE A. RYAN
19 PATRICIA N. SYVERSON
20 LINDSEY M. GOMEZ-GRAY
2901 North Central Avenue, Suite 1000
Phoenix, Arizona 85012
Telephone: 602-274-1100

21 BONNETT, FAIRBOURN, FRIEDMAN
22 & BALINT, P.C.
TODD D. CARPENTER
600 West Broadway, Suite 900
23 San Diego, California 92101
Telephone: (619) 756-6978

24 FUTTERMAN HOWARD ASHLEY
25 & WELTMAN, P.C.
STEWART WELTMAN
26 122 South Michigan Avenue, Suite 1850
Chicago, Illinois 60603
27 Telephone: 312-427-3600

28 Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Cecilia Linares (b) County of Residence of First Listed Plaintiff <u>Imperial</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) Patricia N. Syverson/Bonnett, Fairbourn, Friedman & Balint 2901 N. Central Ave., Ste. 1000, Phoenix, AZ 85012	DEFENDANTS Costco Wholesale, Inc. County of Residence of First Listed Defendant <u>King Co.</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
---	--

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:47%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 USC 1332(d)(2)</u>
	Brief description of cause: <u>Violation of Civil Code 1720, Business & Professional Code 1720, Breach of Express Warranty</u>

VII. REQUESTED IN COMPLAINT:	<input checked="" type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ <u>5,000,000.00</u>	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____	DOCKET NUMBER _____
-------------------------------------	---------------------------------	---------------------

DATE <u>11/02/2011</u>	SIGNATURE OF ATTORNEY OF RECORD <u>s/ Patricia N. Syverson</u>
---------------------------	---

FOR OFFICE USE ONLY

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN (*To be admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (203111)
LINDSEY M. GOMEZ-GRAY (*To be admitted Pro Hac Vice*)
2901 N. Central Avenue, Suite 1000
Phoenix, AZ 85012
Telephone: 602-274-1100
Facsimile: 602-274-1199

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
TODD D. CARPENTER (234464)
600 W. Broadway, Suite 900
San Diego, California 92101
Telephone: 619-756-6978
Facsimile: 602-798-5860

FUTTERMAN HOWARD ASHLEY
WATKINS & WELTMAN, P.C.
STEWART WELTMAN (*To be admitted Pro Hac Vice*)
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 6060
Telephone: 312-427-3600
Fax: 312-427-1850

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CECILIA LINARES, On Behalf of Herself
and All Other Similarly Situated California
Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: **'11CV2547 MMARBB**

CLASS ACTION

DECLARATION OF PATRICIA N.
SYVERSON PURSUANT TO CALIFORNIA
CIVIL CODE §1780(d)

//

//

1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C.,
4 the counsel of record for plaintiff in the above-entitled action

5 2. Defendant Costco Wholesale, Inc., has done and is doing business in the
6 Southern District of California. Such business includes the marketing, distributing and sale of
7 its Kirkland Signature™ Extra Strength Glucosamine Chondroitin Sulfate and Kirkland
8 Signature™ Extra Strength Glucosamine HCL and MSM joint supplements (collectively, the
9 “Kirkland Glucosamine Products”). Furthermore, Plaintiff Linares purchased the Kirkland
10 products in El Centro, California.
11

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed this 2nd day of Novemeber 2011, at Phoenix, Arizona.

15
16 BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
17 ELAINE A. RYAN
PATRICIA N. SYVERSON (203111)
18 LINDSEY M. GOMEZ-GRAY

19 s/ Patricia N. Syverson
20 Patricia N. Syverson

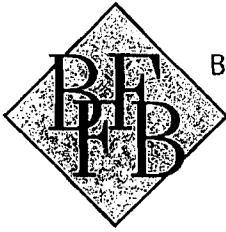
21 2901 N. Central Avenue, Suite 1000
Phoenix, Arizona 85012
22 Telephone: (602) 274-1100
23 Facsimile: (602) 798-5860
afriedman@bffb.com
24 eryl@bffb.com
psyverson@bffb.com

25 BONNETT, FAIRBOURN, FRIEDMAN
26 & BALINT, P.C.
TODD D. CARPENTER (234464)
27 600 West Broadway Suite 900
San Diego, California 92101
28 Telephone: (619) 756-6978

Facsimile: (602) 798-5860
tcarpenter@bffb.com

FUTTERMAN HOWARD ASHLEY
& WELTMAN, P.C.
STEWART WELTMAN
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Telephone: 312-427-3600
Fax: 312-427-1850
sweltman@futtermanhoward.com

Attorneys for Plaintiff



BONNETT, FAIRBOURN,
FRIEDMAN & BALINT, PC

JERRY C. BONNETT
FRANCIS J. BALINT, JR.
C. KEVIN DYKSTRA
ANDREW Q. EVERROAD
JONATHAN S. WALLACK
CHRISTINA L. BANNON
WILLIAM F. KING
ANDREW M. EVANS
KEVIN R. HANGER

WILLIAM G. FAIRBOURN
VAN BUNCH
ELAINE A. RYAN
KATHRYN A. HONECKER
GUY A. HANSON
MANFRED P. MUECKE¹
TONNA K. FARRAR²
TY D. FRANKEL
ERIC D. ZARD

ANDREW S. FRIEDMAN
ROBERT J. SPURLOCK
WENDY J. HARRISON
PATRICIA N. SYVERSON
KIMBERLY C. PAGE
TODD D. CARPENTER¹
T. BRENT JORDAN³
LINDSEY M. GOMEZ

MICHAEL N. WIDENER, Of Counsel

¹Admitted Only in California
²Admitted Only in California, Missouri
and Kansas
³Admitted Only in Pennsylvania

November 2, 2011

VIA CERTIFIED MAIL (RETURN RECEIPT)
(RECEIPT NO. 7011-0470-0002-5152-4850)

James D. Sinegal
Chief Executive Officer
Costco Wholesale, Inc.
999 Lake Drive
Issaquah, WA 98027

Re: Linares v. Costco Wholesale, Inc.

Dear Mr. Sinegal:

Our law firm and the Futterman, Howard, Ashley & Weltman firm represent Cecilia Linares and all other similarly situated California Residents in an action against Costco Wholesale, Inc. ("Costco"), arising out of, *inter alia*, misrepresentations, either express or implied, by Costco to consumers that its Kirkland Signature™ Glucosamine line of joint dietary supplements¹ improve joint mobility, rebuild cartilage and improve joint function.

Ms. Linares and others similarly situated purchased the Kirkland Glucosamine products unaware that Costco's representations found on the Products' labels and packages that Kirkland Glucosamine is clinically proven to provide "Optimum Joint Health & Mobility", "Help[] Build Cartilage", "Nourish[] Joint And Connective Tissue" and "Support[] Joint Cushioning" are false. Several clinical studies have found no causative link between the ingredients in the Kirkland Glucosamine products and joint renewal, mobility and rejuvenation. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

Costco's representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Costco with the intent to result in the sale of the Kirkland Glucosamine products to the consuming public. The joint renewal, mobility and rejuvenation representations do not assist consumers; they simply mislead them.

¹ The Kirkland Signature™ Glucosamine line of joint health dietary supplements include: (1) Kirkland Signature™ Extra Strength Glucosamine/Chondroitin Sulfate and (2) Kirkland Signature™ Extra Strength Glucosamine HCL and MSM (collectively, the "Kirkland Glucosamine").

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [Kirkland Glucosamine has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

* * *

- (7) Representing that [Kirkland Glucosamine is] of a particular standard, quality or grade, . . . if [it is] of another.

* * *

- (9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

- (16) Representing that [Kirkland Glucosamine has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Costco's representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California Residents that Costco immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Costco should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

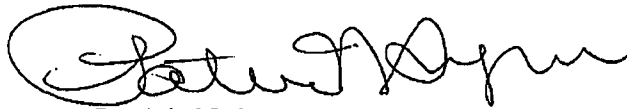
Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Costco address this problem immediately.

Costco must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;
2. Notify all such purchasers so identified that upon their request, Costco will offer an appropriate correction, replacement, or other remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Kirkland Glucosamine purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that these products are effective at improving joint mobility, rebuilding cartilage or improving joint function when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Patricia N. Syverson', written over a horizontal line.

Patricia N. Syverson
For the Firm

PNS:lmg
Enclosure

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN (*To be admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (203111)
LINDSEY M. GOMEZ-GRAY (*To be admitted Pro Hac Vice*)
2901 N. Central Ave., Suite 1000
Phoenix, AZ 85012
eryan@bffb.com
psyverson@bffb.com
lgomez-gray@bffb.com
Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
TODD D. CARPENTER (234464)
600 W. Broadway, Suite 900
San Diego, California 92101
tcarpenter@bffb.com
Telephone: 619-756-6978

FUTTERMAN HOWARD ASHLEY
& WELTMAN, P.C.
STEWART WELTMAN (*To be admitted Pro Hac Vice*)
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 60603
SWELTMAN@FUTTERMANHOWARD.COM
Telephone: 312-427-3600

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CECILIA LINARES, On Behalf of Herself
and All Other Similarly Situated California
Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: 3:11-cv-02547-MMA-RBB

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§1750 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiff Cecilia Linares ("Plaintiff"), by and through her attorneys, brings this
2 action on behalf of herself and all others similarly situated against Defendant Costco
3 Wholesale Inc. ("Costco" or "Defendant"), and alleges as follows:

4 **NATURE OF ACTION**

5 1. Defendant markets, sells and distributes the Kirkland Signature^{TM1}
6 Glucosamine line of joint health dietary supplements.² Through an extensive,
7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
8 claims that its Kirkland Glucosamine products help improve joint mobility, rebuild
9 cartilage and improve joint function for all joints in the human body, for adults of all ages
10 and for all manner and stages of joint related ailments. For example, on each and every
11 Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently
12 states that Kirkland Glucosamine is "Clinically Proven Effective" for "optimum
13 mobility" and "as a building block for healthy cartilage" and that "two tablets per day
14 deliver" these benefits, as well as "nourishes JOINT and CONNECTIVE TISSUE" and
15 "supports JOINT CUSHIONING" (hereafter referred to as the "joint renewal, mobility
16 and rejuvenation" representations). On each and every Kirkland Glucosamine and MSM
17 product label and/or package, Defendant makes similar joint renewal, mobility and
18 rejuvenation claims and also promises that "noticeable improvement in flexibility and
19 range of motion should be expected after taking this supplement as directed on a
20 consistent basis." However, the Kirkland Glucosamine products do not benefit or
21 promote joint renewal, mobility and rejuvenation. Clinical cause and effect studies have
22 found no causative link between the ingredients in the Kirkland Glucosamine products

23
24 ¹ Kirkland SignatureTM is Costco's store brand, also known as its "own-brand", "house
25 brand", or "private label". It is available exclusively at Costco's website and Costco
26 warehouses and is trademarked by the company. Kirkland SignatureTM is one of the most
27 successful brands in the country.

28 ² The Kirkland SignatureTM Glucosamine line of joint health dietary supplements include:
(1) Kirkland SignatureTM Extra Strength Glucosamine Chondroitin Sulfate ("Kirkland
Glucosamine Chondroitin"); and (2) Kirkland SignatureTM Extra Strength Glucosamine
HCL and MSM ("Kirkland Glucosamine and MSM") (collectively, "Kirkland
Glucosamine" or the "Products").

1 and joint renewal, mobility and rejuvenation. Defendant also does not have competent
2 and reliable scientific evidence to support its representations. Defendant's representations
3 are false, misleading, and reasonably likely to deceive the public.

4 2. Despite the deceptive nature of Defendant's representations, Defendant
5 conveyed and continues to convey its deceptive joint renewal, mobility and rejuvenation
6 representations through a variety of media, including in its print advertisements, as well
7 as on its Product packages and labeling, website and online promotional materials. The
8 only reason a consumer would purchase the Kirkland Glucosamine products is to obtain
9 the advertised joint health benefits, which Kirkland Glucosamine does not provide.

10 3. Defendant's marketing and advertising campaign is designed to cause
11 consumers to buy Kirkland Glucosamine. Defendant's deceptive marketing and
12 advertising campaign has succeeded. Estimated sales of joint dietary supplements
13 including Kirkland Glucosamine approached \$820 million in 2006.³

14 4. Plaintiff brings this action on behalf of herself and other similarly situated
15 California consumers who have purchased the Products to halt the dissemination of this
16 false and misleading advertising message, correct the false and misleading perception it
17 has created in the minds of consumers, and obtain redress for those who have purchased
18 the Kirkland Glucosamine products. Plaintiff alleges violations of the Consumers Legal
19 Remedies Act, the Unfair Competition Law, and Breach of Express Warranty created by
20 Defendant's advertising, including false labeling.

21 **JURISDICTION AND VENUE**

22 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which there are in excess of 100 class members and
25 the members of the Class are citizens of a state different from Defendant.

26
27 ³ 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last
visited Oct. 3, 2011).

FACTUAL ALLEGATIONS

The Kirkland Glucosamine Products

10. Since 2001, Costco has distributed, marketed, and sold the Kirkland Signature™ line of joint dietary supplements. These products include: (1) Kirkland Signature™ Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland Signature™ Extra Strength Glucosamine HCL and MSM.

11. The Kirkland Glucosamine products are sold online and in Costco stores statewide. The Kirkland Glucosamine and MSM product is available in 375 count bottles, retailing for approximately \$18. The Kirkland Glucosamine Chondroitin product is available in 220 count bottles, retailing for approximately \$25. The following are screen shots of the Kirkland Glucosamine products:



12. Since the Products' launch, Costco has consistently conveyed the message to consumers throughout California that the Kirkland Glucosamine products, with their "extra strength" formulas are clinically proven to deliver "optimum mobility" and will protect and build cartilage. Defendant's renewal, mobility and rejuvenation representations are false, misleading and deceptive.

13. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient in both Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The

1 Products' labeling and packaging states the benefits associated with taking glucosamine
2 hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and
3 other connective tissues, which are needed for healthy structure and function of joints."
4 There is no competent and reliable scientific evidence that taking glucosamine—let alone
5 through oral administration—results in the body metabolizing it into something that
6 builds cartilage or improves joint structure or function. In fact, clinical cause and effect
7 studies have found no causative link between glucosamine hydrochloride
8 supplementation and joint renewal, mobility or rejuvenation.

9 14. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex
10 carbohydrate found in the body's connective tissues. On the Product's labeling and
11 packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and
12 serves as a building block for healthy new cartilage." There is no competent and reliable
13 scientific evidence that taking chondroitin—let alone through oral
14 administration—results in the body metabolizing it into something that assists in building
15 joint cartilage. Clinical cause and effect studies have found no causative link between
16 chondroitin supplementation and joint renewal, mobility or rejuvenation.

17 15. The Methylsulfonylmethane ("MSM") found in Kirkland Glucosamine and
18 MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee,
19 and milk. On the Product's labeling and packaging, Defendant claims that MSM "is a
20 necessary component that works in conjunction with Glucosamine to provide the building
21 blocks of collagen, an important component of healthy joints and connective tissue.
22 Clinical research shows MSM increases glucosamine's effectiveness." There is no
23 competent and reliable scientific evidence that taking MSM—let alone through oral
24 administration—results in the body metabolizing it into something that builds cartilage or
25 improves joint structure or function, or makes glucosamine work more effectively.
26 Clinical cause and effect studies have found no causative link between MSM
27 supplementation and joint renewal, mobility or rejuvenation.
28

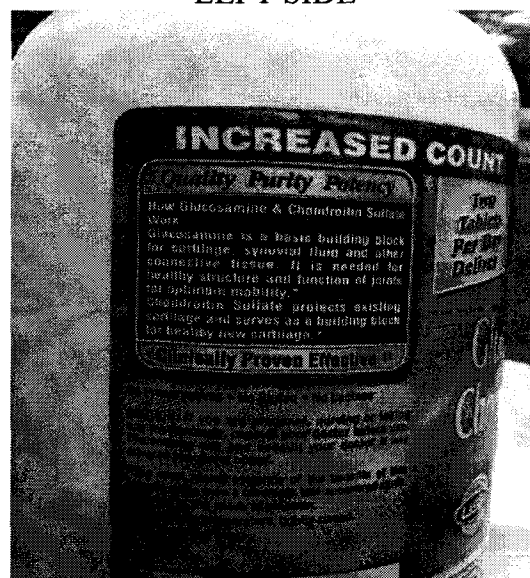
1 16. The Kirkland Glucosamine Chondroitin bottle references one study
2 purportedly supporting Defendant's "Clinically Proven Effective" representation. Other
3 than referencing the study sponsor, no other identifying information is included. The
4 referenced NIH study is not competent and reliable scientific support for Defendant's
5 representations. The NIH sponsored study did not examine, let alone find, that
6 glucosamine and chondroitin rebuild cartilage, nourish joint and connective tissue or
7 support joint cushioning. Defendant's citation to this study as support for its joint
8 renewal, mobility and rejuvenation representations constitutes further deceptive and
9 misleading conduct, in as much as the study is not competent and reliable evidence of
10 efficacy.

11 17. In fact, numerous clinical cause and effect studies have found no causative
12 link between any of the primary active ingredients in the Kirkland Glucosamine products
13 alone, or in combination, and joint renewal, mobility and rejuvenation. Nevertheless,
14 Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an
15 effective joint treatment—let alone an effective treatment for *all* joints in the human
16 body, for adults of *all* ages and for *all* manner and stages of joint related ailments —
17 prominently claims on the Products' packaging and labeling that Kirkland Glucosamine,
18 with its "extra strength" formula, will "deliver" "optimum joint mobility", rebuild
19 cartilage and improve joint function. Front, back and side shots of the two Kirkland
20 Glucosamine product labels appear as follows:

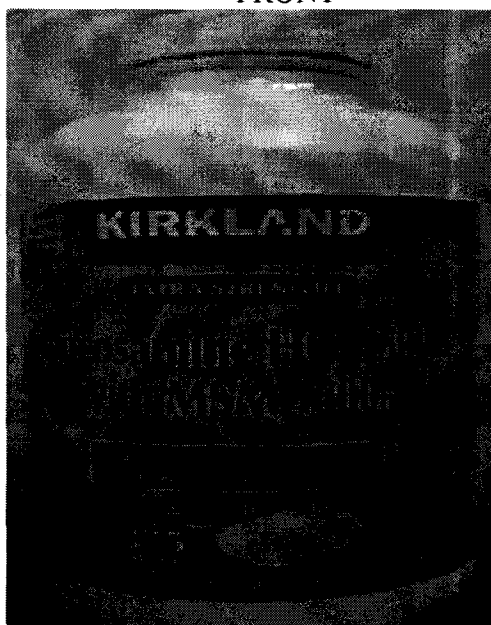
FRONT



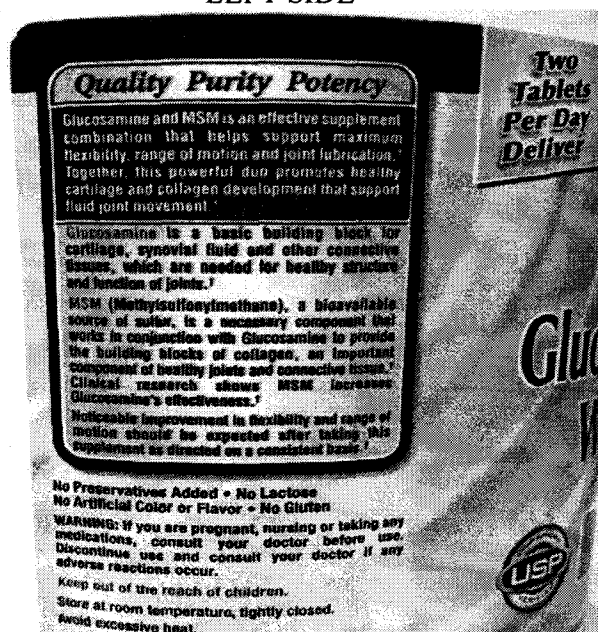
LEFT SIDE



FRONT



LEFT SIDE



18. Defendant did not and does not have competent and reliable scientific evidence that any of the ingredients in its Kirkland Glucosamine products taken alone or in combination benefit, improve or promote joint renewal, mobility or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Kirkland Glucosamine products and the prevention or improvement of joint

1 degeneration or other joint ailments. Defendant's renewal and rejuvenation
2 representations are false and misleading and reasonably likely to deceive the average
3 consumer.

4 ***The impact of Defendant's wrongful conduct***

5 19. Despite the lack of competent and reliable scientific evidence and
6 numerous clinical studies that have found no causative link between the ingredients in the
7 Kirkland Glucosamine products and joint renewal, mobility or rejuvenation, Defendant
8 continues to unequivocally claim that its Kirkland Glucosamine products are an effective
9 treatment for improving joint renewal, mobility and rejuvenation in all adults.

10 20. As the distributor of the Kirkland Glucosamine products, Defendant
11 possesses specialized knowledge regarding the content and effects of the ingredients
12 contained in its Kirkland Glucosamine products and is in a superior position to learn of
13 the effects—and has learned of the effects—its Products have on consumers.

14 21. Specifically, Defendant affirmatively misrepresented that the Kirkland
15 Glucosamine products, with their "extra strength formula", are clinically proven to
16 provide "Optimum JOINT HEALTH & MOBILITY", "Help[] Build CARTILAGE",
17 "Nourish[] JOINT and CONNECTIVE tissue" and "Support[] JOINT CUSHIONING".
18 Having made these affirmative misrepresentations, Defendant failed to disclose that well-
19 conducted, clinical cause-and-effect studies have found no causative relationship between
20 the product ingredients and the prevention or improvement of joint degeneration or other
21 related ailments and Defendant has no competent and reliable scientific evidence that its
22 Kirkland Glucosamine products are effective in helping provide joint renewal, mobility
23 or rejuvenation as represented.

24 22. Notwithstanding these deceptive representations and material omissions,
25 Defendant conveyed and continues to convey one uniform message: Kirkland
26 Glucosamine, with its "extra strength formula", is clinically proven to provide "Optimum
27 JOINT HEALTH & MOBILITY", "Help[] Build CARTILAGE", "Nourish[] JOINT and
28

1 CONNECTIVE tissue” and “Support[] JOINT CUSHIONING” for all joints in the
2 human body, for adults of all ages and for all manner and stages of joint related ailments..

3 23. Plaintiff and Class members have been and will continue to be deceived or
4 misled by Defendant’s deceptive joint renewal, mobility and rejuvenation
5 representations. Plaintiff purchased and consumed the Product during the Class period
6 and in doing so, read and considered the Product label and based her decision to buy the
7 Product on the joint renewal, mobility and rejuvenation representations. Defendant’s
8 deceptive representations and omissions were a material factor in influencing Plaintiff’s
9 decision to purchase and consume the Product. Plaintiff would not have purchased the
10 Product had she known that Defendant’s representations were false and misleading, that
11 Defendant did not possess competent and reliable scientific evidence to support its joint
12 renewal, mobility and rejuvenation representations, and that clinical cause-and-effect
13 studies have found no causative link between the ingredients in Kirkland Glucosamine
14 and joint renewal, mobility or rejuvenation.

15 24. As a result, Plaintiff and the Class members have been damaged in their
16 purchases of these Products and have been deceived into purchasing Products that they
17 believed, based on Defendant’s representations, were proven to be effective in improving
18 joint mobility, rebuilding cartilage and improving joint function when, in fact, they are
19 not.

20 25. Defendant, by contrast, reaped enormous profits from its false marketing
21 and sale of these Products.

22 **CLASS DEFINITION AND ALLEGATIONS**

23 26. Plaintiff brings this action on behalf of herself and all other similarly
24 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
25 Rules of Civil Procedure and seeks certification of the following Class:

26 All California residents who, within the applicable statute of
27 limitations, purchased Kirkland Signature™ Extra Strength
28 Glucosamine Chondroitin Sulfate and/or Kirkland Signature™

Extra Strength Glucosamine with MSM.

Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the Kirkland Glucosamine products for the purpose of resale.

27. Members of the Class are so numerous and geographically dispersed that joinder of all Class members is impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class contains many thousands of members. The precise number of Class members is unknown to Plaintiff.

28. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. The common legal and factual questions include, but are not limited to, the following:

- Whether the claims discussed herein that Defendant made about the Products were or are misleading, or reasonably likely to deceive;
- Whether Defendant's alleged conduct violates public policy;
- Whether the alleged conduct constitutes violations of the laws asserted herein;
- Whether Defendant engaged in false and misleading advertising;
- Whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss;
- Whether Plaintiff and Class members are entitled to restitution, disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
- Whether Plaintiff and Class members are entitled to an award of compensatory and/or punitive damages.

29. Plaintiff's claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above, were subject to Defendant's deceptive joint renewal, mobility and rejuvenation representations accompanying each and every bottle of the Kirkland

1 Glucosamine products which include the same primary active ingredient – glucosamine
2 hydrochloride. Plaintiff is advancing the same claims and legal theories on behalf of
3 herself and all members of the Class.

4 30. Plaintiff will fairly and adequately represent and protect the interests of the
5 members of the Class. Plaintiff has retained counsel competent and experienced in both
6 consumer protection and class litigation.

7 31. A class action is superior to other available methods for the fair and
8 efficient adjudication of this controversy. The expense and burden of individual
9 litigation would make it impracticable or impossible for proposed Class members to
10 prosecute their claims individually. It would thus be virtually impossible for the Class,
11 on an individual basis, to obtain effective redress for the wrongs done to them.
12 Furthermore, even if Class members could afford such individualized litigation, the court
13 system could not. Individualized litigation would create the danger of inconsistent or
14 contradictory judgments arising from the same set of facts. Individualized litigation
15 would also increase the delay and expense to all parties and the court system from the
16 issues raised by this action. By contrast, the class action device provides the benefits of
17 adjudication of these issues in a single proceeding, economies of scale, and
18 comprehensive supervision by a single court, and presents no unusual management
19 difficulties under the circumstances here.

20 32. In the alternative, the Class also may be certified because Defendant has
21 acted or refused to act on grounds generally applicable to the Class thereby making
22 appropriate final declaratory and/or injunctive relief with respect to the members of the
23 Class as a whole.

24 33. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
25 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
26 and prevent Defendant from engaging in the acts described, and requiring Defendant to
27 provide full restitution to Plaintiff and Class members.
28

34. Unless a Class is certified, Defendant will retain monies received as a result of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide injunction is issued, Defendant will continue to commit the violations alleged, and the members of the Class and the general public will continue to be misled.

COUNT I
Violation of Business & Professions Code §17200, *et seq.*

35. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

36. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class.

37. As alleged herein, Plaintiff has suffered injury in fact and lost money or property as a result of Defendant's conduct because she purchased Kirkland Glucosamine in reliance on Defendant's joint renewal, mobility and rejuvenation representations detailed above, but did not receive a product that provides joint renewal, mobility or rejuvenation.

38. The Unfair Competition Law, Business & Professions Code §17200, *et seq.* (“UCL”), prohibits any “unlawful,” “fraudulent” or “unfair” business act or practice and any false or misleading advertising. In the course of conducting business, Defendant committed unlawful business practices by, *inter alia*, making the representations (which also constitutes advertising within the meaning of §17200) and omissions of material facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

39. Plaintiff and the Class reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

40. Defendant's actions also constitute "unfair" business acts or practices

1 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
2 misrepresented and omitted material facts regarding its Kirkland Glucosamine labels and
3 packaging, and thereby offended an established public policy, and engaged in immoral,
4 unethical, oppressive, and unscrupulous activities that are substantially injurious to
5 consumers.

6 41. As stated in this Complaint, Plaintiff alleges violations of consumer
7 protection, unfair competition and truth in advertising laws, resulting in harm to
8 consumers. Defendant's acts and omissions also violate and offend the public policy
9 against engaging in false and misleading advertising, unfair competition and deceptive
10 conduct towards consumers. This conduct constitutes violations of the unfair prong of
11 Business & Professions Code §17200, *et seq.*

12 42. There were reasonably available alternatives to further Defendant's
13 legitimate business interests, other than the conduct described herein.

14 43. Business & Professions Code §17200, *et seq.*, also prohibits any
15 "fraudulent business act or practice."

16 44. Defendant's actions, claims, nondisclosures and misleading statements, as
17 more fully set forth above, were also false, misleading and/or likely to deceive the
18 consuming public within the meaning of Business & Professions Code §17200, *et seq.*

19 45. Plaintiff and other members of the Class have in fact been deceived as a
20 result of their reliance on Defendant's material representations and omissions, which are
21 described above. This reliance has caused harm to Plaintiff and other members of the
22 Class who each purchased Defendant's Kirkland Glucosamine products. Plaintiff and the
23 other Class members have suffered injury in fact and lost money as a result of these
24 unlawful, unfair, and fraudulent practices.

25 46. As a result of its deception, Defendant has been able to reap unjust revenue
26 and profit.

27 47. Unless restrained and enjoined, Defendant will continue to engage in the
28

1 above-described conduct. Accordingly, injunctive relief is appropriate.

2 48. Plaintiff, on behalf of herself and all others similarly situated, and the
3 general public, seeks restitution and disgorgement of all money obtained from Plaintiff
4 and the members of the Class collected as a result of unfair competition, an injunction
5 prohibiting Defendant from continuing such practices, corrective advertising and all other
6 relief this Court deems appropriate, consistent with Business & Professions Code
7 §17203.

8 **COUNT II**
Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

9 49. Plaintiff re-alleges and incorporates by reference the allegations contained
10 in the paragraphs above as if fully set forth herein.

11 50. Plaintiff Cecilia Linares brings this claim individually and on behalf of the
12 Class.

13 51. This cause of action is brought under the Consumers Legal Remedies Act,
14 California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by
15 California Civil Code §1761(d). Defendant’s Kirkland Glucosamine products are goods
16 within the meaning of the Act.

17 52. Defendant violated and continues to violate the Act by engaging in the
18 following practices proscribed by California Civil Code §1770(a) in transactions with
19 Plaintiff and the Class which were intended to result in, and did result in, the sale of
20 Defendant’s Kirkland Glucosamine products:

21 (5) Representing that [the Kirkland Glucosamine products have] . . .
22 characteristics, . . . uses [or] benefits . . . which [they] do not have.

23 * * *

24 (7) Representing that [the Kirkland Glucosamine products are] of a particular
25 standard, quality or grade, . . . if [they are] of another.

26 * * *

27 (9) Advertising goods . . . with the intent not to sell them as advertised.
28

* * *

(16) Representing that [the Kirkland Glucosamine products have] been supplied in accordance with a previous representation when [they have] not.

53. Defendant violated the Act by representing and failing to disclose material facts on the Kirkland Glucosamine product labels and packaging, as described above, when it knew, or should have known, that the representations were unsubstantiated, were contrary to several clinical cause and effect studies finding the ingredients in all Kirkland Glucosamine products to be inefficacious, were false and misleading and that the omissions were of material facts they were obligated to disclose.

54. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

55. Pursuant to §1782 of the Act, by letter dated November 2, 2011, Plaintiff notified Defendant in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act.

56. Defendant failed to rectify or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff further seeks claims for actual, punitive and statutory damages, as appropriate.

57. Defendant's conduct is malicious, fraudulent and wanton.

COUNT III
Breach of Express Warranty

58. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

59. Plaintiff Cecilia Linares brings this claim individually and on behalf of the Class.

60. Defendant expressly warranted on each and every box of Kirkland

1 Glucosamine that the Products help to provide "Optimum JOINT HEALTH &
2 MOBILITY", "Help[] Build CARTILAGE", "Nourish[] JOINT and CONNECTIVE
3 tissue" and "Support[] JOINT CUSHIONING". These joint renewal, mobility and
4 rejuvenation statements made by Defendant are affirmations of fact that became part of
5 the basis of the bargain and created an express warranty that the goods would conform to
6 the stated promises. Plaintiff read and placed importance on Defendant's joint renewal,
7 mobility and rejuvenation representations.

8 61. All conditions precedent to Defendant's liability under this contract have
9 been performed by Plaintiff and the Class.

10 62. Defendant breached the terms of this contract, including the express
11 warranties, with Plaintiff and the Class by not providing Products that could provide the
12 benefits described above which was the only reason Plaintiff and Class members
13 purchased the Kirkland Glucosamine products.

14 63. As a result of Defendant's breach of its warranty, Plaintiff and Class
15 members have been damaged in the amount of the purchase price of the Kirkland
16 Glucosamine products they purchased.

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for a judgment:

- 19 A. Certifying the class as requested herein;
20 B. Awarding Plaintiff and the proposed Class members damages;
21 C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff
22 and the proposed Class members;
23 D. Awarding declaratory and injunctive relief as permitted by law or equity,
24 including enjoining Defendant from continuing the unlawful practices as set
25 forth herein, and directing Defendant to identify, with court supervision,
26 victims of its conduct and pay them restitution and disgorgement of all
27
28

monies acquired by Defendant by means of any act or practice declared by
this Court to be wrongful;

- E. Ordering Defendant to engage in a corrective advertising campaign;
- F. Awarding attorneys' fees and costs; and
- G. Providing such further relief as may be just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

DATED: November 29, 2011

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC

By: s/ Patricia N. Syverson
ELAINE A. RYAN
PATRICIA N. SYVERSON
LINDSEY M. GOMEZ-GRAY
2901 North Central Avenue, Suite 1000
Phoenix, Arizona 85012
Telephone: 602-274-1100

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
TODD D. CARPENTER
600 West Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 756-6978

FUTTERMAN HOWARD ASHLEY
& WELTMAN, P.C.
STEWART WELTMAN
122 South Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Telephone: 312-427-3600

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record denoted on the Court's Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 29, 2011.

By: s/ Patricia N. Syverson

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC
2901 North Central Avenue, Suite 1000
Phoenix, Arizona 85012
602-274-1100
602-274-1199 facsimile
Email: psyverson@bffb.com

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN (*Admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (203111)
LINDSEY M. GOMEZ-GRAY
2901 N. Central Ave., Suite 1000
Phoenix, AZ 85012
eryan@bffb.com
psyverson@bffb.com
lgomez-gray@bffb.com
Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
TODD D. CARPENTER (234464)
600 W. Broadway, Suite 900
San Diego, California 92101
tcarpenter@bffb.com
Telephone: 619-756-6978

LEVIN, FISHBEIN, SEDRAN & BERMAN
STEWART WELTMAN, OF COUNSEL (*Admitted Pro Hac Vice*)
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Sweltman@futtermanhoward.com
Telephone: 312-427-3600

LEVIN, FISHBEIN, SEDRAN & BERMAN
HOWARD J. SEDRAN (*Admitted Pro Hac Vice*)
510 Walnut Street
Philadelphia, Pennsylvania 19106
Telephone: 215-592-1500
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CECILIA LINARES, an Individual and
ABEL GONZALEZ, an Individual, On
Behalf of Themselves and All Other Similarly
Situated California Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: 3:11-cv-02547-MMA-RBB

CLASS ACTION

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§1750 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiffs Cecilia Linares and Abel Gonzalez, by and through their attorneys, brings
2 this action on behalf of themselves and all others similarly situated against Defendant
3 Costco Wholesale Inc., and allege as follows:

4 **NATURE OF ACTION**

5 1. Defendant markets, sells and distributes the Kirkland Signature^{TM1}
6 Glucosamine line of joint health dietary supplements.² Through an extensive,
7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
8 claims that its Kirkland Glucosamine products help improve joint mobility, rebuild
9 cartilage and improve joint function for all joints in the human body, for adults of all ages
10 and for all manner and stages of joint related ailments. For example, on each and every
11 Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently
12 states that Kirkland Glucosamine is “Clinically Proven Effective” for “optimum
13 mobility” and “as a building block for healthy cartilage” and that “two tablets per day
14 deliver” these benefits, as well as “nourishes JOINT and CONNECTIVE TISSUE” and
15 “supports JOINT CUSHIONING” (hereafter referred to as the “joint renewal, mobility
16 and rejuvenation” representations). On each and every Kirkland Glucosamine and MSM
17 product label and/or package, Defendant makes similar joint renewal, mobility and
18 rejuvenation claims and also promises that “noticeable improvement in flexibility and
19 range of motion should be expected after taking this supplement as directed on a
20 consistent basis.” However, the Kirkland Glucosamine products do not benefit or
21 promote joint renewal, mobility and rejuvenation. Clinical cause and effect studies have
22 found no causative link between the ingredients in the Kirkland Glucosamine products

23
24 ¹ Kirkland SignatureTM is Costco’s store brand, also known as its “own-brand”, “house
25 brand”, or “private label”. It is available exclusively at Costco’s website and Costco
warehouses and is trademarked by the company. Kirkland SignatureTM is one of the most
successful brands in the country.

26 ²The Kirkland SignatureTM Glucosamine line of joint health dietary supplements include:
27 (1) Kirkland SignatureTM Extra Strength Glucosamine Chondroitin Sulfate (“Kirkland
28 Glucosamine Chondroitin”); and (2) Kirkland SignatureTM Extra Strength Glucosamine
HCL and MSM (“Kirkland Glucosamine and MSM”) (collectively, “Kirkland
Glucosamine” or the “Products”).

1 and joint renewal, mobility and rejuvenation. Defendant also does not have competent
2 and reliable scientific evidence to support its representations. Defendant's representations
3 are false, misleading, and reasonably likely to deceive the public.

4 2. Despite the deceptive nature of Defendant's representations, Defendant
5 conveyed and continues to convey its deceptive joint renewal, mobility and rejuvenation
6 representations through a variety of media, including in its print advertisements, as well
7 as on its Product packages and labeling, website and online promotional materials. The
8 only reason a consumer would purchase the Kirkland Glucosamine products is to obtain
9 the advertised joint health benefits, which Kirkland Glucosamine does not provide.

10 3. Defendant's marketing and advertising campaign is designed to cause
11 consumers to buy Kirkland Glucosamine. Defendant's deceptive marketing and
12 advertising campaign has succeeded. Estimated sales of joint dietary supplements
13 including Kirkland Glucosamine approached \$820 million in 2006.³

14 4. Plaintiffs bring this action on behalf of themselves and other similarly
15 situated California consumers who have purchased the Products to halt the dissemination
16 of this false and misleading advertising message, correct the false and misleading
17 perception it has created in the minds of consumers, and obtain redress for those who
18 have purchased the Kirkland Glucosamine products. Plaintiffs allege violations of the
19 Consumers Legal Remedies Act, the Unfair Competition Law, and Breach of Express
20 Warranty created by Defendant's advertising, including false labeling.

21 **JURISDICTION AND VENUE**

22 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which there are in excess of 100 class members and
25 the members of the Class are citizens of a state different from Defendant.

26
27 ³ 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last
visited Oct. 3, 2011).

1 the joint pain in his shoulders and in so doing relied on every single one of Defendant's
2 renewal, mobility and rejuvenation representations. The Kirkland Glucosamine and
3 MSM that Plaintiff Gonzalez purchased and took as directed did not help improve joint
4 mobility, rebuild cartilage or improve joint function as represented. As a result, Plaintiff
5 Gonzalez suffered injury in fact and lost money. He would not have purchased Kirkland
6 Glucosamine and MSM had he known it did not provide the advertised joint health
7 benefits.

8 10. Defendant Costco Wholesale Inc., is a public corporation incorporated
9 under the laws of the state of Washington. Defendant's corporate headquarters is located
10 at 999 Lake Drive, Issaquah, WA 98027. Defendant distributes, markets, and sells the
11 Kirkland Glucosamine products to tens of thousands of consumers in California.

12 **FACTUAL ALLEGATIONS**

13 ***The Kirkland Glucosamine Products***

14 11. Since 2001, Costco has distributed, marketed, and sold the Kirkland
15 Signature™ line of joint dietary supplements. These products include: (1) Kirkland
16 Signature™ Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland
17 Signature™ Extra Strength Glucosamine HCL and MSM.

18 12. The Kirkland Glucosamine products are sold online and in Costco stores
19 statewide. The Kirkland Glucosamine and MSM product is available in 375 count
20 bottles, retailing for approximately \$18. The Kirkland Glucosamine Chondroitin product
21 is available in 220 count bottles, retailing for approximately \$25. The following are
22 screen shots of the Kirkland Glucosamine products:



13. Since the Products' launch, Costco has consistently conveyed the message to consumers throughout California that the Kirkland Glucosamine products, with their "extra strength" formulas are clinically proven to deliver "optimum mobility" and will protect and build cartilage. Defendant's renewal, mobility and rejuvenation representations are false, misleading and deceptive.

14. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient in both Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The Products' labeling and packaging states the benefits associated with taking glucosamine hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and other connective tissues, which are needed for healthy structure and function of joints." There is no competent and reliable scientific evidence that taking glucosamine—let alone through oral administration—results in the body metabolizing it into something that builds cartilage or improves joint structure or function. In fact, clinical cause and effect studies have found no causative link between glucosamine hydrochloride supplementation and joint renewal, mobility or rejuvenation.

15. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex carbohydrate found in the body's connective tissues. On the Product's labeling and packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and

1 serves as a building block for healthy new cartilage.” There is no competent and reliable
2 scientific evidence that taking chondroitin—let alone through oral
3 administration—results in the body metabolizing it into something that assists in building
4 joint cartilage. Clinical cause and effect studies have found no causative link between
5 chondroitin supplementation and joint renewal, mobility or rejuvenation.

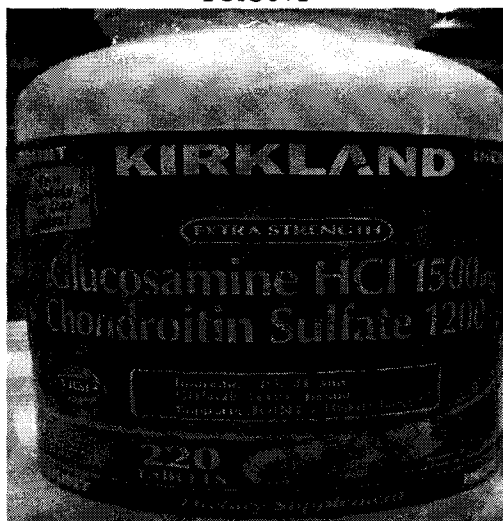
6 16. The Methylsulfonylmethane (“MSM”) found in Kirkland Glucosamine and
7 MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee,
8 and milk. On the Product’s labeling and packaging, Defendant claims that MSM “is a
9 necessary component that works in conjunction with Glucosamine to provide the building
10 blocks of collagen, an important component of healthy joints and connective tissue.
11 Clinical research shows MSM increases glucosamine’s effectiveness.” There is no
12 competent and reliable scientific evidence that taking MSM—let alone through oral
13 administration—results in the body metabolizing it into something that builds cartilage or
14 improves joint structure or function, or makes glucosamine work more effectively.
15 Clinical cause and effect studies have found no causative link between MSM
16 supplementation and joint renewal, mobility or rejuvenation.

17 17. The Kirkland Glucosamine Chondroitin bottle references one study
18 purportedly supporting Defendant’s “Clinically Proven Effective” representation. Other
19 than referencing the study sponsor, no other identifying information is included. The
20 referenced NIH study is not competent and reliable scientific support for Defendant’s
21 representations. The NIH sponsored study did not examine, let alone find, that
22 glucosamine and chondroitin rebuild cartilage, nourish joint and connective tissue or
23 support joint cushioning. Defendant’s citation to this study as support for its joint
24 renewal, mobility and rejuvenation representations constitutes further deceptive and
25 misleading conduct, in as much as the study is not competent and reliable evidence of
26 efficacy.

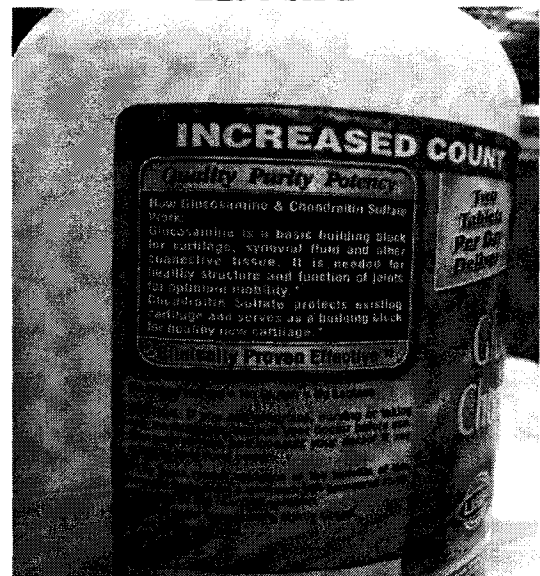
27 18. In fact, numerous clinical cause and effect studies have found no causative
28

link between any of the primary active ingredients in the Kirkland Glucosamine products alone, or in combination, and joint renewal, mobility and rejuvenation. Nevertheless, Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an effective joint treatment—let alone an effective treatment for *all* joints in the human body, for adults of *all* ages and for *all* manner and stages of joint related ailments — prominently claims on the Products’ packaging and labeling that Kirkland Glucosamine, with its “extra strength” formula, will “deliver” “optimum joint mobility”, rebuild cartilage and improve joint function. Front, back and side shots of the two Kirkland Glucosamine product labels appear as follows:

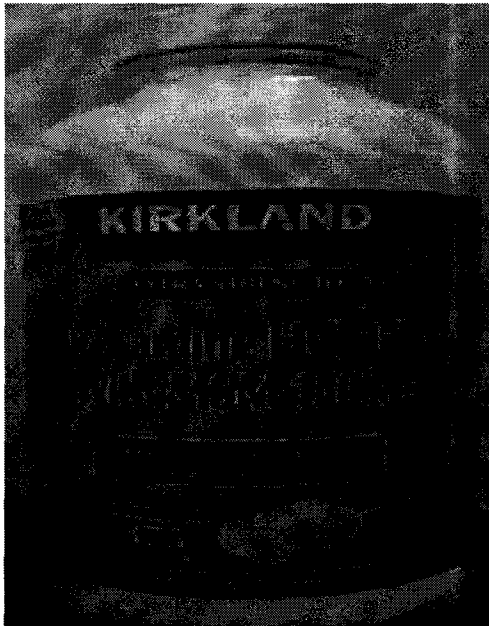
FRONT



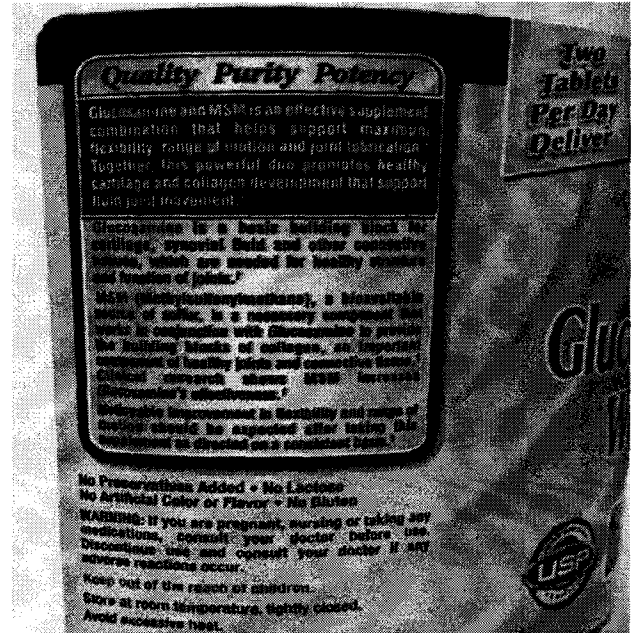
LEFT SIDE



FRONT



LEFT SIDE



19. Defendant did not and does not have competent and reliable scientific evidence that any of the ingredients in its Kirkland Glucosamine products taken alone or in combination benefit, improve or promote joint renewal, mobility or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Kirkland Glucosamine products and the prevention or improvement of joint degeneration or other joint ailments. Defendant's renewal and rejuvenation representations are false and misleading and reasonably likely to deceive the average consumer.

The impact of Defendant's wrongful conduct

20. Despite the lack of competent and reliable scientific evidence and numerous clinical studies that have found no causative link between the ingredients in the Kirkland Glucosamine products and joint renewal, mobility or rejuvenation, Defendant continues to unequivocally claim that its Kirkland Glucosamine products are an effective treatment for improving joint renewal, mobility and rejuvenation in all adults.

21. As the distributor of the Kirkland Glucosamine products, Defendant possesses specialized knowledge regarding the content and effects of the ingredients contained in its Kirkland Glucosamine products and is in a superior position to learn of

1 the effects—and has learned of the effects—its Products have on consumers.

2 22. Specifically, Defendant affirmatively misrepresented that the Kirkland
3 Glucosamine products, with their “extra strength formula”, are clinically proven to
4 provide “Optimum JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”,
5 “Nourish[] JOINT and CONNECTIVE tissue” and “Support[] JOINT CUSHIONING”.
6 Having made these affirmative misrepresentations, Defendant failed to disclose that well-
7 conducted, clinical cause-and-effect studies have found no causative relationship between
8 the product ingredients and the prevention or improvement of joint degeneration or other
9 related ailments and Defendant has no competent and reliable scientific evidence that its
10 Kirkland Glucosamine products are effective in helping provide joint renewal, mobility
11 or rejuvenation as represented.

12 23. Notwithstanding these deceptive representations and material omissions,
13 Defendant conveyed and continues to convey one uniform message: Kirkland
14 Glucosamine, with its “extra strength formula”, is clinically proven to provide “Optimum
15 JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”, “Nourish[] JOINT and
16 CONNECTIVE tissue” and “Support[] JOINT CUSHIONING” for all joints in the
17 human body, for adults of all ages and for all manner and stages of joint related ailments..

18 24. Plaintiffs and Class members have been and will continue to be deceived or
19 misled by Defendant’s deceptive joint renewal, mobility and rejuvenation
20 representations. Plaintiffs purchased and consumed the Products during the Class period
21 and in doing so, read and considered the Products’ label and based their decision to buy
22 the Products on the joint renewal, mobility and rejuvenation representations.
23 Defendant’s deceptive representations and omissions were a material factor in
24 influencing Plaintiffs’ decision to purchase and consume the Products. Plaintiffs would
25 not have purchased the Products had they known that Defendant’s representations were
26 false and misleading, that Defendant did not possess competent and reliable scientific
27 evidence to support its joint renewal, mobility and rejuvenation representations, and that
28

1 clinical cause-and-effect studies have found no causative link between the ingredients in
2 Kirkland Glucosamine and joint renewal, mobility or rejuvenation.

3 25. As a result, Plaintiffs and the Class members have been damaged in their
4 purchases of these Products and have been deceived into purchasing Products that they
5 believed, based on Defendant's representations, were proven to be effective in improving
6 joint mobility, rebuilding cartilage and improving joint function when, in fact, they are
7 not.

8 26. Defendant, by contrast, reaped enormous profits from its false marketing
9 and sale of these Products.

10 **CLASS DEFINITION AND ALLEGATIONS**

11 27. Plaintiffs bring this action on behalf of themselves and all other similarly
12 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
13 Rules of Civil Procedure and seek certification of the following Class:

14 All California residents who, within the applicable statute of
15 limitations, purchased Kirkland Signature[™] Extra Strength
16 Glucosamine Chondroitin Sulfate and/or Kirkland Signature[™]
Extra Strength Glucosamine with MSM.

17 Excluded from the Class are Defendant, its parents,
18 subsidiaries, affiliates, officers and directors, and those who
19 purchased the Kirkland Glucosamine products for the purpose
20 of resale.

21 28. Members of the Class are so numerous and geographically dispersed that
22 joinder of all Class members is impracticable. Plaintiffs are informed and believe, and
23 on that basis allege, that the proposed Class contains many thousands of members. The
24 precise number of Class members is unknown to Plaintiffs.

25 29. Common questions of law and fact exist as to all members of the Class and
26 predominate over questions affecting only individual Class members. The common legal
27 and factual questions include, but are not limited to, the following:

- 28 • Whether the claims discussed herein that Defendant made about the

1 Products were or are misleading, or reasonably likely to deceive;

- 2 • Whether Defendant's alleged conduct violates public policy;
- 3 • Whether the alleged conduct constitutes violations of the laws
- 4 asserted herein;
- 5 • Whether Defendant engaged in false and misleading advertising;
- 6 • Whether Plaintiff and Class members have sustained monetary loss
- 7 and the proper measure of that loss;
- 8 • Whether Plaintiff and Class members are entitled to restitution,
- 9 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
- 10 • Whether Plaintiff and Class members are entitled to an award of
- 11 compensatory and/or punitive damages.

12 30. Plaintiff's claims are typical of the claims of the members of the Class
13 because, *inter alia*, all Class members were injured through the uniform misconduct
14 described above, were subject to Defendant's deceptive joint renewal, mobility and
15 rejuvenation representations accompanying each and every bottle of the Kirkland
16 Glucosamine products which include the same primary active ingredient – glucosamine
17 hydrochloride. Plaintiff is advancing the same claims and legal theories on behalf of
18 herself and all members of the Class.

19 31. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the Class. Plaintiff has retained counsel competent and experienced in both
21 consumer protection and class litigation.

22 32. A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy. The expense and burden of individual
24 litigation would make it impracticable or impossible for proposed Class members to
25 prosecute their claims individually. It would thus be virtually impossible for the Class,
26 on an individual basis, to obtain effective redress for the wrongs done to them.
27 Furthermore, even if Class members could afford such individualized litigation, the court
28

1 system could not. Individualized litigation would create the danger of inconsistent or
2 contradictory judgments arising from the same set of facts. Individualized litigation
3 would also increase the delay and expense to all parties and the court system from the
4 issues raised by this action. By contrast, the class action device provides the benefits of
5 adjudication of these issues in a single proceeding, economies of scale, and
6 comprehensive supervision by a single court, and presents no unusual management
7 difficulties under the circumstances here.

8 33. In the alternative, the Class also may be certified because Defendant has
9 acted or refused to act on grounds generally applicable to the Class thereby making
10 appropriate final declaratory and/or injunctive relief with respect to the members of the
11 Class as a whole.

12 34. Plaintiff seeks preliminary and permanent injunctive and equitable relief on
13 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
14 and prevent Defendant from engaging in the acts described, and requiring Defendant to
15 provide full restitution to Plaintiff and Class members.

16 35. Unless a Class is certified, Defendant will retain monies received as a result
17 of its conduct that were taken from Plaintiff and Class members. Unless a Class-wide
18 injunction is issued, Defendant will continue to commit the violations alleged, and the
19 members of the Class and the general public will continue to be misled.

20 **COUNT I**
21 **Violation of Business & Professions Code §17200, *et seq.***

22 36. Plaintiff repeats and re-alleges the allegations contained in the paragraphs
23 above, as if fully set forth herein.

24 37. Plaintiff Cecilia Linares brings this claim individually and on behalf of the
25 Class.

26 38. As alleged herein, Plaintiff has suffered injury in fact and lost money or
27 property as a result of Defendant's conduct because she purchased Kirkland Glucosamine
28

1 in reliance on Defendant's joint renewal, mobility and rejuvenation representations
2 detailed above, but did not receive a product that provides joint renewal, mobility or
3 rejuvenation.

4 39. The Unfair Competition Law, Business & Professions Code §17200, *et seq.*
5 ("UCL"), prohibits any "unlawful," "fraudulent" or "unfair" business act or practice and
6 any false or misleading advertising. In the course of conducting business, Defendant
7 committed unlawful business practices by, *inter alia*, making the representations (which
8 also constitutes advertising within the meaning of §17200) and omissions of material
9 facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711,
10 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common
11 law.

12 40. Plaintiff and the Class reserve the right to allege other violations of law,
13 which constitute other unlawful business acts or practices. Such conduct is ongoing and
14 continues to this date.

15 41. Defendant's actions also constitute "unfair" business acts or practices
16 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
17 misrepresented and omitted material facts regarding its Kirkland Glucosamine labels and
18 packaging, and thereby offended an established public policy, and engaged in immoral,
19 unethical, oppressive, and unscrupulous activities that are substantially injurious to
20 consumers.

21 42. As stated in this Complaint, Plaintiff alleges violations of consumer
22 protection, unfair competition and truth in advertising laws, resulting in harm to
23 consumers. Defendant's acts and omissions also violate and offend the public policy
24 against engaging in false and misleading advertising, unfair competition and deceptive
25 conduct towards consumers. This conduct constitutes violations of the unfair prong of
26 Business & Professions Code §17200, *et seq.*

27 43. There were reasonably available alternatives to further Defendant's
28

1 legitimate business interests, other than the conduct described herein.

2 44. Business & Professions Code §17200, *et seq.*, also prohibits any
3 “fraudulent business act or practice.”

4 45. Defendant’s actions, claims, nondisclosures and misleading statements, as
5 more fully set forth above, were also false, misleading and/or likely to deceive the
6 consuming public within the meaning of Business & Professions Code §17200, *et seq.*

7 46. Plaintiff and other members of the Class have in fact been deceived as a
8 result of their reliance on Defendant’s material representations and omissions, which are
9 described above. This reliance has caused harm to Plaintiff and other members of the
10 Class who each purchased Defendant’s Kirkland Glucosamine products. Plaintiff and the
11 other Class members have suffered injury in fact and lost money as a result of these
12 unlawful, unfair, and fraudulent practices.

13 47. As a result of its deception, Defendant has been able to reap unjust revenue
14 and profit.

15 48. Unless restrained and enjoined, Defendant will continue to engage in the
16 above-described conduct. Accordingly, injunctive relief is appropriate.

17 49. Plaintiff, on behalf of herself and all others similarly situated, and the
18 general public, seeks restitution and disgorgement of all money obtained from Plaintiff
19 and the members of the Class collected as a result of unfair competition, an injunction
20 prohibiting Defendant from continuing such practices, corrective advertising and all other
21 relief this Court deems appropriate, consistent with Business & Professions Code
22 §17203.

23 **COUNT II**
Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.*

24 50. Plaintiff re-alleges and incorporates by reference the allegations contained
25 in the paragraphs above as if fully set forth herein.

26 51. Plaintiff Cecilia Linares brings this claim individually and on behalf of the
27 Class.
28

52. This cause of action is brought under the Consumers Legal Remedies Act, California Civil Code §1750, et seq. (the “Act”). Plaintiff is a consumer as defined by California Civil Code §1761(d). Defendant’s Kirkland Glucosamine products are goods within the meaning of the Act.

53. Defendant violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of Defendant's Kirkland Glucosamine products:

(5) Representing that [the Kirkland Glucosamine products have] . . . characteristics, . . . uses [or] benefits . . . which [they] do not have.

* * *

(7) Representing that [the Kirkland Glucosamine products are] of a particular standard, quality or grade, . . . if [they are] of another.

* * *

(9) Advertising goods . . . with the intent not to sell them as advertised.

* * *

(16) Representing that [the Kirkland Glucosamine products have] been supplied in accordance with a previous representation when [they have] not.

54. Defendant violated the Act by representing and failing to disclose material facts on the Kirkland Glucosamine product labels and packaging, as described above, when it knew, or should have known, that the representations were unsubstantiated, were contrary to several clinical cause and effect studies finding the ingredients in all Kirkland Glucosamine products to be inefficacious, were false and misleading and that the omissions were of material facts they were obligated to disclose.

55. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order enjoining the above-described wrongful acts and practices of Defendant and for restitution and disgorgement.

56. Pursuant to §1782 of the Act, by letter dated November 2, 2011, Plaintiff notified Defendant in writing by certified mail of the particular violations of §1770 of the Act and demanded that Defendant rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to so act.

58. Defendant's conduct is malicious, fraudulent and wanton.

59. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

61. Defendant expressly warranted on each and every box of Kirkland Glucosamine that the Products help to provide “Optimum JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”, “Nourish[] JOINT and CONNECTIVE tissue” and “Support[] JOINT CUSHIONING”. These joint renewal, mobility and rejuvenation statements made by Defendant are affirmations of fact that became part of the basis of the bargain and created an express warranty that the goods would conform to the stated promises. Plaintiff read and placed importance on Defendant’s joint renewal, mobility and rejuvenation representations.

63. Defendant breached the terms of this contract, including the express warranties, with Plaintiff and the Class by not providing Products that could provide the

1 benefits described above which was the only reason Plaintiff and Class members
2 purchased the Kirkland Glucosamine products.

3 64. As a result of Defendant's breach of its warranty, Plaintiff and Class
4 members have been damaged in the amount of the purchase price of the Kirkland
5 Glucosamine products they purchased.

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for a judgment:

- 8 A. Certifying the class as requested herein;
9 B. Awarding Plaintiff and the proposed Class members damages;
10 C. Awarding restitution and disgorgement of Defendant's revenues to Plaintiff
11 and the proposed Class members;
12 D. Awarding declaratory and injunctive relief as permitted by law or equity,
13 including enjoining Defendant from continuing the unlawful practices as set
14 forth herein, and directing Defendant to identify, with court supervision,
15 victims of its conduct and pay them restitution and disgorgement of all
16 monies acquired by Defendant by means of any act or practice declared by
17 this Court to be wrongful;
18 E. Ordering Defendant to engage in a corrective advertising campaign;
19 F. Awarding attorneys' fees and costs; and
20 G. Providing such further relief as may be just and proper.

21 **JURY DEMAND**

22 Plaintiffs demand a trial by jury on all issues so triable.

23 DATED: April 25, 2012

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC

24
25 By: s/ Todd D. Carpenter
26 TODD D. CARPENTER
27 600 West Broadway, Suite 900
28 San Diego, California 92101
Telephone: (619) 756-6978

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BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN
PATRICIA N. SYVERSON
LINDSEY M. GOMEZ-GRAY
2901 North Central Avenue, Suite 1000
Phoenix, Arizona 85012
Telephone: 602-274-1100

LEVIN, FISHBEIN, SEDRAN & BERMAN
STEWART WELTMAN, Of Counsel
122 South Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Telephone: 312-427-3600

LEVIN, FISHBEIN, SEDRAN & BERMAN
HOWARD J. SEDRAN
510 Walnut Street
Philadelphia, Pennsylvania 19106
Telephone: 215-592-1500

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record denoted on the Court's Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 25, 2012.

By: s/ Todd D. Carpenter

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC
TODD D. CARPENTER
600 W. Broadway, Suite 900
San Diego, California 92101
tcarpenter@bffb.com
Telephone: 619-756-6978

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ELAINE A. RYAN (*Admitted Pro Hac Vice*)
PATRICIA N. SYVERSON (203111)
LINDSEY M. GOMEZ-GRAY
2901 N. Central Ave., Suite 1000
Phoenix, AZ 85012
eryan@bffb.com
psyverson@bffb.com
lgomez-gray@bffb.com
Telephone: (602) 274-1100

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
TODD D. CARPENTER (234464)
600 W. Broadway, Suite 900
San Diego, California 92101
tcarpenter@bffb.com
Telephone: 619-756-6978

LEVIN, FISHBEIN, SEDRAN & BERMAN
STEWART WELTMAN, OF COUNSEL (*Admitted Pro Hac Vice*)
122 S. Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Sweltman@futtermanhoward.com
Telephone: 312-427-3600

LEVIN, FISHBEIN, SEDRAN & BERMAN
HOWARD J. SEDRAN (*Admitted Pro Hac Vice*)
510 Walnut Street
Philadelphia, Pennsylvania 19106
Telephone: 215-592-1500
Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CECILIA LINARES, an Individual and
ABEL GONZALEZ, an Individual, On
Behalf of Themselves and All Other Similarly
Situated California Residents,

Plaintiffs,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.: 3:11-cv-02547-MMA-RBB

CLASS ACTION

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF THE UNFAIR
COMPETITION LAW, Business and
Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS
LEGAL REMEDIES ACT, Civil Code
§1750 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiffs Cecilia Linares and Abel Gonzalez, by and through their attorneys, bring
2 this action on behalf of themselves and all others similarly situated against Defendant
3 Costco Wholesale Inc., and allege as follows:

4 **NATURE OF ACTION**

5 1. Defendant markets, sells and distributes the Kirkland Signature^{™1}
6 Glucosamine line of joint health dietary supplements.² Through an extensive,
7 widespread, comprehensive and uniform nationwide marketing campaign, Defendant
8 claims that its Kirkland Glucosamine products help improve joint mobility, rebuild
9 cartilage and improve joint function for all joints in the human body, for adults of all ages
10 and for all manner and stages of joint related ailments. For example, on each and every
11 Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently
12 states that Kirkland Glucosamine is “Clinically Proven Effective” for “optimum
13 mobility” and “as a building block for healthy cartilage” and that “two tablets per day
14 deliver” these benefits, as well as “nourishes JOINT and CONNECTIVE TISSUE” and
15 “supports JOINT CUSHIONING” (hereafter referred to as the “joint renewal, mobility
16 and rejuvenation” representations). On each and every Kirkland Glucosamine and MSM
17 product label and/or package, Defendant makes similar joint renewal, mobility and
18 rejuvenation claims and also promises that “noticeable improvement in flexibility and
19 range of motion should be expected after taking this supplement as directed on a
20 consistent basis.” However, the Kirkland Glucosamine products do not benefit or
21 promote joint renewal, mobility and rejuvenation. Clinical cause and effect studies have
22 found no causative link between the ingredients in the Kirkland Glucosamine products

23
24 ¹ Kirkland Signature[™] is Costco’s store brand, also known as its “own-brand”, “house
25 brand”, or “private label”. It is available exclusively at Costco’s website and Costco
warehouses and is trademarked by the company. Kirkland Signature[™] is one of the most
successful brands in the country.

26 ²The Kirkland Signature[™] Glucosamine line of joint health dietary supplements include:
27 (1) Kirkland Signature[™] Extra Strength Glucosamine Chondroitin Sulfate (“Kirkland
28 Glucosamine Chondroitin”); and (2) Kirkland Signature[™] Extra Strength Glucosamine
HCL and MSM (“Kirkland Glucosamine and MSM”) (collectively, “Kirkland
Glucosamine” or the “Products”).

1 and joint renewal, mobility and rejuvenation. Defendant also does not have competent
2 and reliable scientific evidence to support its representations. Defendant's representations
3 are false, misleading, and reasonably likely to deceive the public.

4 2. Despite the deceptive nature of Defendant's representations, Defendant
5 conveyed and continues to convey its deceptive joint renewal, mobility and rejuvenation
6 representations through a variety of media, including in its print advertisements, as well
7 as on its Product packages and labeling, website and online promotional materials. The
8 only reason a consumer would purchase the Kirkland Glucosamine products is to obtain
9 the advertised joint health benefits, which Kirkland Glucosamine does not provide.

10 3. Defendant's marketing and advertising campaign is designed to cause
11 consumers to buy Kirkland Glucosamine. Defendant's deceptive marketing and
12 advertising campaign has succeeded. Estimated sales of joint dietary supplements
13 including Kirkland Glucosamine approached \$820 million in 2006.³

14 4. Plaintiffs bring this action on behalf of themselves and other similarly
15 situated California consumers who have purchased the Products to halt the dissemination
16 of this false and misleading advertising message, correct the false and misleading
17 perception it has created in the minds of consumers, and obtain redress for those who
18 have purchased the Kirkland Glucosamine products. Plaintiffs allege violations of the
19 Consumers Legal Remedies Act, the Unfair Competition Law, and Breach of Express
20 Warranty created by Defendant's advertising, including false labeling.

21 **JURISDICTION AND VENUE**

22 5. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which there are in excess of 100 class members and
25 the members of the Class are citizens of a state different from Defendant.

26
27 ³ 2007 Nutrition Industry Overview, Nutrition Business J., *available at*
28 <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last
visited Oct. 3, 2011).

6. This Court has personal jurisdiction over Defendant because Defendant is authorized to do and does conduct business in California. Defendant has marketed, promoted, distributed, and sold the Kirkland Glucosamine products in California, and Defendant has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, and marketing within this State to render the exercise of jurisdiction by this Court permissible.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred while they resided in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendant transacts substantial business in this District.

PARTIES

8. Plaintiff Cecilia Linares resides in Imperial, California. Towards the end of 2010, Plaintiff Linares was exposed to and saw Defendant's representations by reading the front, back and sides of the Kirkland Glucosamine Chondroitin label at a Costco store in El Centro, California. After reading the label, Plaintiff Linares purchased the Kirkland Glucosamine Chondroitin product to relieve her joint pain and in so doing relied on every single one of Defendant's renewal, mobility and rejuvenation representations. The Kirkland Glucosamine Chondroitin that Plaintiff purchased and took as directed did not help improve joint mobility, rebuild cartilage or improve joint function as represented. As a result, Plaintiff Linares suffered injury in fact and lost money. She would not have purchased Kirkland Glucosamine Chondroitin had she known it did not provide the advertised joint health benefits.

9. Plaintiff Abel Gonzalez resides in Canyon Lake, California. On or around January 2012, Plaintiff Gonzalez was exposed to and saw Defendant's representations by reading the front, back and sides of the Kirkland Glucosamine and MSM label at a Costco store in southern California. After reading the label, Plaintiff Gonzalez purchased the Kirkland Glucosamine and MSM product to improve the joint function and reduce

1 the joint pain in his shoulders and in so doing relied on every single one of Defendant's
2 renewal, mobility and rejuvenation representations. The Kirkland Glucosamine and
3 MSM that Plaintiff Gonzalez purchased and took as directed did not help improve joint
4 mobility, rebuild cartilage or improve joint function as represented. As a result, Plaintiff
5 Gonzalez suffered injury in fact and lost money. He would not have purchased Kirkland
6 Glucosamine and MSM had he known it did not provide the advertised joint health
7 benefits.

8 10. Defendant Costco Wholesale Inc. is a public corporation incorporated
9 under the laws of the state of Washington. Defendant's corporate headquarters is located
10 at 999 Lake Drive, Issaquah, Washington 98027. Defendant distributes, markets, and
11 sells the Kirkland Glucosamine products to tens of thousands of consumers in California.

12 **FACTUAL ALLEGATIONS**

13 ***The Kirkland Glucosamine Products***

14 11. Since 2001, Costco has distributed, marketed, and sold the Kirkland
15 Signature[™] line of joint dietary supplements. These products include: (1) Kirkland
16 Signature[™] Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland
17 Signature[™] Extra Strength Glucosamine HCL and MSM.

18 12. The Kirkland Glucosamine products are sold online and in Costco stores
19 statewide. The Kirkland Glucosamine and MSM product is available in 375 count
20 bottles, retailing for approximately \$18. The Kirkland Glucosamine Chondroitin product
21 is available in 220 count bottles, retailing for approximately \$25. The following are
22 screen shots of the Kirkland Glucosamine products:



13. Since the Products' launch, Costco has consistently conveyed the message to consumers throughout California that the Kirkland Glucosamine products, with their "extra strength" formulas are clinically proven to deliver "optimum mobility" and will protect and build cartilage. Defendant's renewal, mobility and rejuvenation representations are false, misleading and deceptive.

14. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient in both Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The Products' labeling and packaging states the benefits associated with taking glucosamine hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and other connective tissues, which are needed for healthy structure and function of joints." There is no competent and reliable scientific evidence that taking glucosamine—let alone through oral administration—results in the body metabolizing it into something that builds cartilage or improves joint structure or function. In fact, clinical cause and effect studies have found no causative link between glucosamine hydrochloride supplementation and joint renewal, mobility or rejuvenation.

15. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex carbohydrate found in the body's connective tissues. On the Product's labeling and packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and

1 serves as a building block for healthy new cartilage.” There is no competent and reliable
2 scientific evidence that taking chondroitin—let alone through oral
3 administration—results in the body metabolizing it into something that assists in building
4 joint cartilage. Clinical cause and effect studies have found no causative link between
5 chondroitin supplementation and joint renewal, mobility or rejuvenation.

6 16. The Methylsulfonylmethane (“MSM”) found in Kirkland Glucosamine and
7 MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee,
8 and milk. On the Product’s labeling and packaging, Defendant claims that MSM “is a
9 necessary component that works in conjunction with Glucosamine to provide the building
10 blocks of collagen, an important component of healthy joints and connective tissue.
11 Clinical research shows MSM increases glucosamine’s effectiveness.” There is no
12 competent and reliable scientific evidence that taking MSM—let alone through oral
13 administration—results in the body metabolizing it into something that builds cartilage or
14 improves joint structure or function, or makes glucosamine work more effectively.
15 Clinical cause and effect studies have found no causative link between MSM
16 supplementation and joint renewal, mobility or rejuvenation.

17 17. The Kirkland Glucosamine Chondroitin bottle references one study
18 purportedly supporting Defendant’s “Clinically Proven Effective” representation. Other
19 than referencing the study sponsor, no other identifying information is included. The
20 referenced NIH study is not competent and reliable scientific support for Defendant’s
21 representations. The NIH sponsored study did not examine, let alone find, that
22 glucosamine and chondroitin rebuild cartilage, nourish joint and connective tissue or
23 support joint cushioning. Defendant’s citation to this study as support for its joint
24 renewal, mobility and rejuvenation representations constitutes further deceptive and
25 misleading conduct, in as much as the study is not competent and reliable evidence of
26 efficacy.

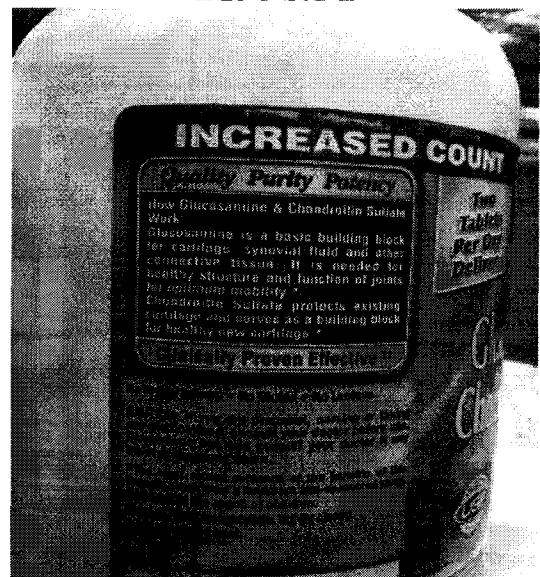
27 18. In fact, numerous clinical cause and effect studies have found no causative
28

link between any of the primary active ingredients in the Kirkland Glucosamine products alone, or in combination, and joint renewal, mobility and rejuvenation. Nevertheless, Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an effective joint treatment—let alone an effective treatment for *all* joints in the human body, for adults of *all* ages and for *all* manner and stages of joint related ailments—prominently claims on the Products’ packaging and labeling that Kirkland Glucosamine, with its “extra strength” formula, will “deliver” “optimum joint mobility”, rebuild cartilage and improve joint function. Front, back and side shots of the two Kirkland Glucosamine product labels appear as follows:

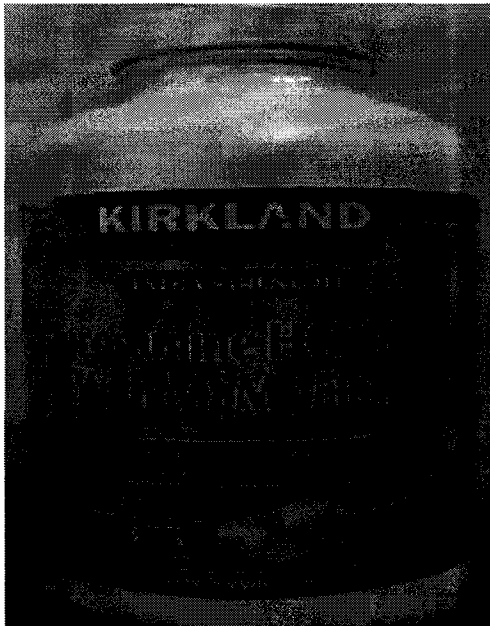
FRONT



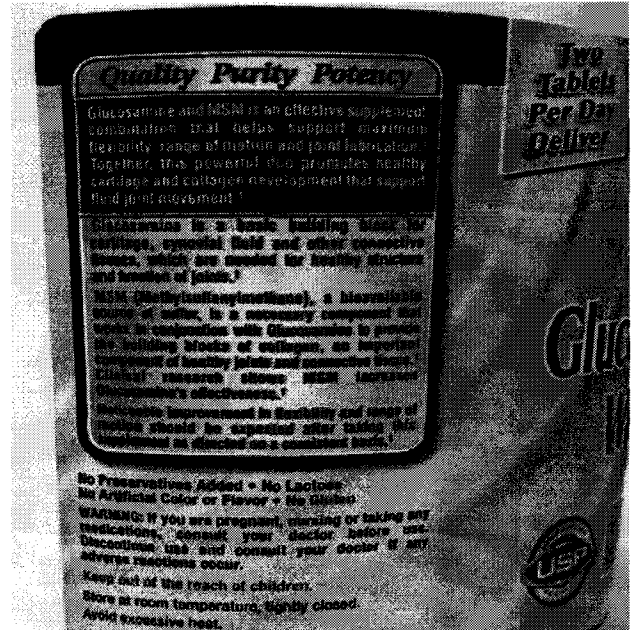
LEFT SIDE



FRONT



LEFT SIDE



19. Defendant did not and does not have competent and reliable scientific evidence that any of the ingredients in its Kirkland Glucosamine products taken alone or in combination benefit, improve or promote joint renewal, mobility or rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Kirkland Glucosamine products and the prevention or improvement of joint degeneration or other joint ailments. Defendant's renewal and rejuvenation representations are false and misleading and reasonably likely to deceive the average consumer.

The impact of Defendant's wrongful conduct

20. Despite the lack of competent and reliable scientific evidence and numerous clinical studies that have found no causative link between the ingredients in the Kirkland Glucosamine products and joint renewal, mobility or rejuvenation, Defendant continues to unequivocally claim that its Kirkland Glucosamine products are an effective treatment for improving joint renewal, mobility and rejuvenation in all adults.

21. As the distributor of the Kirkland Glucosamine products, Defendant possesses specialized knowledge regarding the content and effects of the ingredients contained in its Kirkland Glucosamine products and is in a superior position to learn of

1 the effects—and has learned of the effects—its Products have on consumers.

2 22. Specifically, Defendant affirmatively misrepresented that the Kirkland
3 Glucosamine products, with their “extra strength formula”, are clinically proven to
4 provide “Optimum JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”,
5 “Nourish[] JOINT and CONNECTIVE tissue” and “Support[] JOINT CUSHIONING”.
6 Having made these affirmative misrepresentations, Defendant failed to disclose that well-
7 conducted, clinical cause-and-effect studies have found no causative relationship between
8 the product ingredients and the prevention or improvement of joint degeneration or other
9 related ailments and Defendant has no competent and reliable scientific evidence that its
10 Kirkland Glucosamine products are effective in helping provide joint renewal, mobility
11 or rejuvenation as represented.

12 23. Notwithstanding these deceptive representations and material omissions,
13 Defendant conveyed and continues to convey one uniform message: Kirkland
14 Glucosamine, with its “extra strength formula”, is clinically proven to provide “Optimum
15 JOINT HEALTH & MOBILITY”, “Help[] Build CARTILAGE”, “Nourish[] JOINT and
16 CONNECTIVE tissue” and “Support[] JOINT CUSHIONING” for all joints in the
17 human body, for adults of all ages and for all manner and stages of joint related ailments.

18 24. Plaintiffs and Class members have been and will continue to be deceived or
19 misled by Defendant’s deceptive joint renewal, mobility and rejuvenation
20 representations. Plaintiffs purchased and consumed the Products during the Class period
21 and in doing so, read and considered the Products’ label and based their decision to buy
22 the Products on the joint renewal, mobility and rejuvenation representations.
23 Defendant’s deceptive representations and omissions were a material factor in
24 influencing Plaintiffs’ decision to purchase and consume the Products. Plaintiffs would
25 not have purchased the Products had they known that Defendant’s representations were
26 false and misleading, that Defendant did not possess competent and reliable scientific
27 evidence to support its joint renewal, mobility and rejuvenation representations, and that
28

1 clinical cause-and-effect studies have found no causative link between the ingredients in
2 Kirkland Glucosamine and joint renewal, mobility or rejuvenation.

3 25. As a result, Plaintiffs and the Class members have been damaged in their
4 purchases of these Products and have been deceived into purchasing Products that they
5 believed, based on Defendant's representations, were proven to be effective in improving
6 joint mobility, rebuilding cartilage and improving joint function when, in fact, they are
7 not.

8 26. Defendant, by contrast, reaped enormous profits from its false marketing
9 and sale of these Products.

10 **CLASS DEFINITION AND ALLEGATIONS**

11 27. Plaintiffs bring this action on behalf of themselves and all other similarly
12 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal
13 Rules of Civil Procedure and seek certification of the following Class:

14 All California residents who, within the applicable statute of
15 limitations, purchased Kirkland Signature™ Extra Strength
16 Glucosamine Chondroitin Sulfate and/or Kirkland Signature™
Extra Strength Glucosamine with MSM.

17 Excluded from the Class are Defendant, its parents,
18 subsidiaries, affiliates, officers and directors, and those who
19 purchased the Kirkland Glucosamine products for the purpose
20 of resale.

21 28. Members of the Class are so numerous and geographically dispersed that
22 joinder of all Class members is impracticable. Plaintiffs are informed and believe, and
23 on that basis allege, that the proposed Class contains many thousands of members. The
24 precise number of Class members is unknown to Plaintiffs.

25 29. Common questions of law and fact exist as to all members of the Class and
26 predominate over questions affecting only individual Class members. The common legal
27 and factual questions include, but are not limited to, the following:

- 28 • Whether the claims discussed herein that Defendant made about the

1 Products were or are misleading, or reasonably likely to deceive;

- 2 • Whether Defendant's alleged conduct violates public policy;
- 3 • Whether the alleged conduct constitutes violations of the laws
- 4 asserted herein;
- 5 • Whether Defendant engaged in false and misleading advertising;
- 6 • Whether Plaintiffs and Class members have sustained monetary loss
- 7 and the proper measure of that loss;
- 8 • Whether Plaintiffs and Class members are entitled to restitution,
- 9 disgorgement of Defendant's profits, declaratory and/or injunctive relief; and
- 10 • Whether Plaintiffs and Class members are entitled to an award of
- 11 compensatory and/or punitive damages.

12 30. Plaintiffs' claims are typical of the claims of the members of the Class
13 because, *inter alia*, all Class members were injured through the uniform misconduct
14 described above, were subject to Defendant's deceptive joint renewal, mobility and
15 rejuvenation representations accompanying each and every bottle of the Kirkland
16 Glucosamine products which include the same primary active ingredient – glucosamine
17 hydrochloride. Plaintiffs are advancing the same claims and legal theories on behalf of
18 themselves and all members of the Class.

19 31. Plaintiffs will fairly and adequately represent and protect the interests of the
20 members of the Class. Plaintiffs have retained counsel competent and experienced in
21 both consumer protection and class litigation.

22 32. A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy. The expense and burden of individual
24 litigation would make it impracticable or impossible for proposed Class members to
25 prosecute their claims individually. It would thus be virtually impossible for the Class,
26 on an individual basis, to obtain effective redress for the wrongs done to them.
27 Furthermore, even if Class members could afford such individualized litigation, the court
28

1 system could not. Individualized litigation would create the danger of inconsistent or
2 contradictory judgments arising from the same set of facts. Individualized litigation
3 would also increase the delay and expense to all parties and the court system from the
4 issues raised by this action. By contrast, the class action device provides the benefits of
5 adjudication of these issues in a single proceeding, economies of scale, and
6 comprehensive supervision by a single court, and presents no unusual management
7 difficulties under the circumstances here.

8 33. In the alternative, the Class also may be certified because Defendant has
9 acted or refused to act on grounds generally applicable to the Class thereby making
10 appropriate final declaratory and/or injunctive relief with respect to the members of the
11 Class as a whole.

12 34. Plaintiffs seek preliminary and permanent injunctive and equitable relief on
13 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin
14 and prevent Defendant from engaging in the acts described, and requiring Defendant to
15 provide full restitution to Plaintiffs and Class members.

16 35. Unless a Class is certified, Defendant will retain monies received as a result
17 of its conduct that were taken from Plaintiffs and Class members. Unless a Class-wide
18 injunction is issued, Defendant will continue to commit the violations alleged, and the
19 members of the Class and the general public will continue to be misled.

20 **COUNT I**
21 **Violation of Business & Professions Code §17200, *et seq.***

22 36. Plaintiffs repeat and re-allege the allegations contained in the paragraphs
23 above, as if fully set forth herein.

24 37. Plaintiffs bring this claim individually and on behalf of the Class.

25 38. As alleged herein, Plaintiffs have suffered injury in fact and lost money or
26 property as a result of Defendant's conduct because they purchased Kirkland
27 Glucosamine in reliance on Defendant's joint renewal, mobility and rejuvenation
28

1 representations detailed above, but did not receive a product that provides joint renewal,
2 mobility or rejuvenation.

3 39. The Unfair Competition Law, Business & Professions Code §17200, *et seq.*
4 (“UCL”), prohibits any “unlawful,” “fraudulent” or “unfair” business act or practice and
5 any false or misleading advertising. In the course of conducting business, Defendant
6 committed unlawful business practices by, *inter alia*, making the representations (which
7 also constitutes advertising within the meaning of §17200) and omissions of material
8 facts, as set forth more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711,
9 1770 and Business & Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common
10 law.

11 40. Plaintiffs and the Class reserve the right to allege other violations of law,
12 which constitute other unlawful business acts or practices. Such conduct is ongoing and
13 continues to this date.

14 41. Defendant’s actions also constitute “unfair” business acts or practices
15 because, as alleged above, *inter alia*, Defendant engaged in false advertising,
16 misrepresented and omitted material facts regarding its Kirkland Glucosamine labels and
17 packaging, and thereby offended an established public policy, and engaged in immoral,
18 unethical, oppressive, and unscrupulous activities that are substantially injurious to
19 consumers.

20 42. As stated in this Complaint, Plaintiffs allege violations of consumer
21 protection, unfair competition and truth in advertising laws, resulting in harm to
22 consumers. Defendant’s acts and omissions also violate and offend the public policy
23 against engaging in false and misleading advertising, unfair competition and deceptive
24 conduct towards consumers. This conduct constitutes violations of the unfair prong of
25 Business & Professions Code §17200, *et seq.*

26 43. There were reasonably available alternatives to further Defendant’s
27 legitimate business interests, other than the conduct described herein.
28

1 44. Business & Professions Code §17200, *et seq.*, also prohibits any
2 “fraudulent business act or practice.”

3 45. Defendant’s actions, claims, nondisclosures and misleading statements, as
4 more fully set forth above, were also false, misleading and/or likely to deceive the
5 consuming public within the meaning of Business & Professions Code §17200, *et seq.*

6 46. Plaintiffs and other members of the Class have in fact been deceived as a
7 result of their reliance on Defendant’s material representations and omissions, which are
8 described above. This reliance has caused harm to Plaintiffs and other members of the
9 Class who each purchased Defendant’s Kirkland Glucosamine products. Plaintiffs and
10 the other Class members have suffered injury in fact and lost money as a result of these
11 unlawful, unfair, and fraudulent practices.

12 47. As a result of its deception, Defendant has been able to reap unjust revenue
13 and profit.

14 48. Unless restrained and enjoined, Defendant will continue to engage in the
15 above-described conduct. Accordingly, injunctive relief is appropriate.

16 49. Plaintiffs, on behalf of themselves and all others similarly situated, and the
17 general public, seeks restitution and disgorgement of all money obtained from Plaintiffs
18 and the members of the Class collected as a result of unfair competition, an injunction
19 prohibiting Defendant from continuing such practices, corrective advertising and all other
20 relief this Court deems appropriate, consistent with Business & Professions Code
21 §17203.

22 **COUNT II**
23 **Violation of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.***

24 50. Plaintiffs re-allege and incorporate by reference the allegations contained in
25 the paragraphs above as if fully set forth herein.

26 51. Plaintiffs brings this claim individually and on behalf of the Class.

27 52. This cause of action is brought under the Consumers Legal Remedies Act,
28 California Civil Code §1750, *et seq.* (the “Act”). Plaintiffs are consumers as defined by

1 California Civil Code §1761(d). Defendant's Kirkland Glucosamine products are goods
2 within the meaning of the Act.

3 53. Defendant violated and continues to violate the Act by engaging in the
4 following practices proscribed by California Civil Code §1770(a) in transactions with
5 Plaintiffs and the Class which were intended to result in, and did result in, the sale of
6 Defendant's Kirkland Glucosamine products:

7 (5) Representing that [the Kirkland Glucosamine products have] . . .
8 characteristics, . . . uses [or] benefits . . . which [they] do not have.

9 * * *

10 (7) Representing that [the Kirkland Glucosamine products are] of a particular
11 standard, quality or grade, . . . if [they are] of another.

12 * * *

13 (9) Advertising goods . . . with the intent not to sell them as advertised.

14 * * *

15 (16) Representing that [the Kirkland Glucosamine products have] been supplied
16 in accordance with a previous representation when [they have] not.

17 54. Defendant violated the Act by representing and failing to disclose material
18 facts on the Kirkland Glucosamine product labels and packaging, as described above,
19 when it knew, or should have known, that the representations were unsubstantiated, were
20 contrary to several clinical cause and effect studies finding the ingredients in all Kirkland
21 Glucosamine products to be inefficacious, were false and misleading and that the
22 omissions were of material facts they were obligated to disclose.

23 55. Pursuant to §1782(d) of the Act, Plaintiffs and the Class seek a court order
24 enjoining the above-described wrongful acts and practices of Defendant and for
25 restitution and disgorgement.

26 56. Pursuant to §1782 of the Act, by letter dated November 2, 2011, Plaintiff
27 Linares notified Defendant in writing by certified mail of the particular violations of
28

1 §1770 of the Act and demanded that Defendant rectify the problems associated with the
2 actions detailed above and give notice to all affected consumers of Defendant's intent to
3 so act.

4 57. Defendant failed to rectify or agree to rectify the problems associated with
5 the actions detailed above and give notice to all affected consumers within 30 days of the
6 date of written notice pursuant to §1782 of the Act. Therefore, Plaintiffs further seek
7 claims for actual, punitive and statutory damages, as appropriate.

8 58. Defendant's conduct is malicious, fraudulent and wanton.

9
10 **COUNT III**
Breach of Express Warranty

11 59. Plaintiffs re-allege and incorporate by reference the allegations contained in
12 the paragraphs above as if fully set forth herein.

13 60. Plaintiffs bring this claim individually and on behalf of the Class.

14 61. Defendant expressly warranted on each and every box of Kirkland
15 Glucosamine that the Products help to provide "Optimum JOINT HEALTH &
16 MOBILITY", "Help[] Build CARTILAGE", "Nourish[] JOINT and CONNECTIVE
17 tissue" and "Support[] JOINT CUSHIONING". These joint renewal, mobility and
18 rejuvenation statements made by Defendant are affirmations of fact that became part of
19 the basis of the bargain and created an express warranty that the goods would conform to
20 the stated promises. Plaintiffs read and placed importance on Defendant's joint renewal,
21 mobility and rejuvenation representations.

22 62. All conditions precedent to Defendant's liability under this contract have
23 been performed by Plaintiffs and the Class.

24 63. Defendant breached the terms of this contract, including the express
25 warranties, with Plaintiffs and the Class by not providing Products that could provide the
26 benefits described above which was the only reason Plaintiffs and Class members
27 purchased the Kirkland Glucosamine products.

1 64. As a result of Defendant's breach of its warranty, Plaintiffs and Class
2 members have been damaged in the amount of the purchase price of the Kirkland
3 Glucosamine products they purchased.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiffs prays for a judgment:

- 6 A. Certifying the class as requested herein;
7 B. Awarding Plaintiffs and the proposed Class members damages;
8 C. Awarding restitution and disgorgement of Defendant's revenues to
9 Plaintiffs and the proposed Class members;
10 D. Awarding declaratory and injunctive relief as permitted by law or equity,
11 including enjoining Defendant from continuing the unlawful practices as set
12 forth herein, and directing Defendant to identify, with court supervision,
13 victims of its conduct and pay them restitution and disgorgement of all
14 monies acquired by Defendant by means of any act or practice declared by
15 this Court to be wrongful;
16 E. Ordering Defendant to engage in a corrective advertising campaign;
17 F. Awarding attorneys' fees and costs; and
18 G. Providing such further relief as may be just and proper.

19 **JURY DEMAND**

20 Plaintiffs demand a trial by jury on all issues so triable.

21 DATED: June 1, 2012

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC

23 By: s/ Todd D. Carpenter
24 TODD D. CARPENTER
25 600 West Broadway, Suite 900
 San Diego, California 92101
 Telephone: (619) 756-6978

26 BONNETT, FAIRBOURN, FRIEDMAN
27 & BALINT, P.C.
 ELAINE A. RYAN
28 PATRICIA N. SYVERSON

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LINDSEY M. GOMEZ-GRAY
2901 North Central Avenue, Suite 1000
Phoenix, Arizona 85012
Telephone: 602-274-1100

LEVIN, FISHBEIN, SEDRAN & BERMAN
STEWART WELTMAN, Of Counsel
122 South Michigan Avenue, Suite 1850
Chicago, Illinois 60603
Telephone: 312-427-3600

LEVIN, FISHBEIN, SEDRAN & BERMAN
HOWARD J. SEDRAN
510 Walnut Street
Philadelphia, Pennsylvania 19106
Telephone: 215-592-1500

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 1, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record denoted on the Court's Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 1, 2012.

By: s/ Todd D. Carpenter

BONNETT FAIRBOURN FRIEDMAN
& BALINT, PC
TODD D. CARPENTER
600 W. Broadway, Suite 900
San Diego, California 92101
tcarpenter@bffb.com
Telephone: 619-756-6978

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RAY PADILLA, On Behalf of Himself and
All Other Similarly Situated Residents,

Plaintiff,

v.

COSTCO WHOLESALE, INC., a
Washington corporation,

Defendant.

Case No.:

CLASS ACTION

CLASS ACTION COMPLAINT

Plaintiff Ray Padilla ("Plaintiff"), by and through his attorneys, brings this action on behalf of himself and all other similarly situated Illinois residents and residents of states with Consumer Fraud Laws similar to that of Illinois under the facts particular to this case against Defendant Costco Wholesale Inc. ("Costco" or "Defendant"), and alleges as follows:

NATURE OF ACTION

1. Forty-six million Americans suffer from arthritis. Osteoarthritis, also called degenerative joint tissue disease, is the most prevalent and disabling form of arthritis. Osteoarthritis is caused by the breakdown of cartilage, which is the connective tissue that cushions the ends of bones within the joint. Osteoarthritis is characterized by, among other things, cartilage damage and limited motion (hereafter referred to as the "two primary symptoms of arthritis"). The disease generally occurs late in life, and most commonly affects the hands and large weight bearing joints, such as the knees, hips and back. There is no cure for arthritis and certainly no proven remedy that can regenerate joint/cartilage damage and improve joint mobility. Yet, Defendant promises relief for each of the two primary symptoms of arthritis in the form of a pill which it

markets, sells and distributes as the Kirkland Signature^{TM1} Glucosamine line of joint health dietary supplements.²

2. Joint degeneration also is a concern of many other people including active individuals, such as runners, weight lifters and those who participate in various joint intensive sports. There is no proven medication or dietary supplement that can prevent joint degeneration, such as renewing cartilage or maintaining healthy connective tissue. Yet, Defendant promises that Kirkland Glucosamine will increase joint mobility and flexibility and build cartilage.

3. For example, on each and every Kirkland Glucosamine Chondroitin product label and/or package, Defendant prominently states that Kirkland Glucosamine is “Clinically Proven Effective” for “optimum mobility” and “as a building block for healthy cartilage” and that “two tablets per day deliver” these benefits, as well as “nourishes JOINT and CONNECTIVE TISSUE” and “supports JOINT CUSHIONING” (hereafter referred to as the “joint renewal and rejuvenation” representations). On each and every Kirkland Glucosamine and MSM product label and/or package, Defendant makes similar joint renewal and rejuvenation claims and also promises that “noticeable improvement in flexibility and range of motion should be expected after taking this supplement as directed on a consistent basis.”

4. In making these affirmative representations, Defendant represents to each purchaser of Kirkland Glucosamine that it has competent and reliable scientific evidence that these Products are effective in relieving and reducing the two primary symptoms of arthritis or other joint related ailments or provide joint renewal and rejuvenation.

¹ Kirkland SignatureTM is Costco’s store brand, also known as its “own-brand”, “house brand”, or “private label”. It is available exclusively at Costco’s website and Costco warehouses and is trademarked by the company. Kirkland SignatureTM is one of the most successful brands in the country.

²The Kirkland SignatureTM Glucosamine line of joint health dietary supplements include: (1) Kirkland SignatureTM Extra Strength Glucosamine Chondroitin Sulfate (“Kirkland Glucosamine Chondroitin”); and (2) Kirkland SignatureTM Extra Strength Glucosamine HCL and MSM (“Kirkland Glucosamine and MSM”)(collectively, “Kirkland Glucosamine” or the “Products”).

5. Yet, Defendant does not possess such competent and reliable scientific evidence. In fact, the Kirkland Glucosamine products are not an effective remedy for the two primary symptoms of arthritis or other joint related ailments, nor are they effective in providing joint renewal and rejuvenation. Numerous clinical studies have resulted in a finding of no efficacy for the ingredients in the Kirkland Glucosamine products and joint renewal or rejuvenation. Defendant, however, affirmatively states that these Products provide these benefits when they do not.

6. As a result, Defendant is guilty of deceptive conduct in its marketing and sales of the Kirkland Glucosamine products.

7. Defendant is also guilty of deception by omission in that, after affirmatively asserting that these Products are effective remedies against the two primary symptoms of arthritis or other joint related ailments or provide joint renewal or rejuvenation, Defendant had a duty to tell Plaintiff and the Class members that it did not have competent and reliable scientific evidence to support the efficacy representations that it makes about the Kirkland Glucosamine products.

8. Defendant represented and continues to represent that these Products can provide these benefits when the scientific evidence is that they do not and that such representations are false, misleading, and deceptive.. These were material misrepresentations concerning the only reason that Plaintiff and the Class members would have purchased Defendant's Kirkland Glucosamine products. Other than to use the Kirkland Glucosamine products to relieve the two primary symptoms of arthritis or other joint related ailments or to renew and rejuvenate joints, there is no reason for Plaintiff or the Class members to have purchased these Products. Plaintiff and the Class members would not have purchased a Kirkland Glucosamine product without believing that it provided proven relief from the two primary symptoms of arthritis or other joint related ailments or that it renewed and rejuvenated joints.

9. Thus, through the act of purchasing one of Defendant's Kirkland

Glucosamine products, Plaintiff and each Class member necessarily was deceived by Defendant's representations that these Products were effective and would provide relief from the two primary symptoms of arthritis or other joint related ailments or would renew and rejuvenate joints.

10. Plaintiff and the Class members were also deceived by Defendant in that, after affirmatively asserting that these Products would provide relief from the two primary symptoms of arthritis or other joint related ailments or renew and rejuvenate joints, Defendant committed deception by omission in that (1) it failed to inform Plaintiff and the Class members that numerous clinical studies have found no causative relationship between the ingredients in the Kirkland Glucosamine products and joint renewal or rejuvenation; and (2) that it knew that these Products did not provide the health benefits that Defendant represented they did.

11. Every purchase of the Kirkland Glucosamine products was tainted with Defendant's deceptions in that just by looking at the package on the shelf or following the directions for use, Plaintiff and the Class members would have seen Defendant's deceptive representations.

12. Defendant's deceptive marketing and advertising campaign, including the fact that the scientific evidence is that these Products do not work as Defendant represented, as well as the complete lack of any disclosure that no competent and reliable scientific evidence exists to support the representations that Kirkland Glucosamine will "help improve joint mobility, rebuild cartilage and improve joint function are designed to cause consumers to buy Kirkland Glucosamine. Defendant has succeeded. Estimated sales of joint dietary supplements, including Kirkland Glucosamine, approached \$820 million in 2006.³

13. Plaintiff brings this action on behalf of himself and all other similarly

³ 2007 Nutrition Industry Overview, Nutrition Business J., *available at* <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last visited Oct. 25, 2011).

situated Illinois residents and residents of states with Consumer Fraud Laws similar to that of Illinois under the facts particular to this case, who purchased the Products, to halt the dissemination of this false and misleading advertising message, correct the false and misleading perception it has created in the minds of consumers, and obtain redress for those who have purchased the Kirkland Glucosamine products.⁴ Plaintiff alleges violations of the Illinois Consumer Fraud Act, 815 Ill. Comp. Stat. 502/1, *et seq.*

JURISDICTION AND VENUE

14. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are in excess of 100 class members and the members of the Class are citizens of a state different from Defendant.

15. This Court has personal jurisdiction over Defendant because Defendant is authorized to do and does conduct business in Illinois. Defendant has marketed, promoted, distributed, and sold the Kirkland Glucosamine products in Illinois, and Defendant has sufficient minimum contacts with this State and/or sufficiently avails itself of the markets in this State through its promotion, sales, and marketing within this State to render the exercise of jurisdiction by this Court permissible.

16. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a) and (b)

⁴While discovery may alter the following, Plaintiff preliminarily avers that the other with similar consumer fraud laws under the facts of this case include, but are not limited to: Arkansas (Ark. Code § 4-88-101, *et seq.*); Colorado (Colo. Rev. Stat. § 6-1-101, *et seq.*); Connecticut (Conn. Gen. Stat. § 42-110, *et seq.*); Delaware (Del. Code tit. 6, § 2511, *et seq.*); District of Columbia (D.C. Code § 28-3901, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Georgia (GA Code § 10-1-390 *et seq.*); Hawaii (Haw. Rev. Stat. § 480-1, *et seq.*); Idaho (Idaho Code § 48-601, *et seq.*); Maine (Me. Rev. Stat. tit. 5 § 205-A, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. § 407.010, *et seq.*); Montana (Mo. Code. § 30-14-101, *et seq.*); Nebraska (Neb. Rev. Stat. § 59-1601, *et seq.*); Nevada (Nev. Rev. Stat. § 598.0915, *et seq.*); New Hampshire (N.H. Rev. Stat. § 358-A:1, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New Mexico (N.M. Stat. § 57-12-1, *et seq.*); New York (N.Y. Gen. Bus. Law § 349, *et seq.*); North Dakota (N.D. Cent. Code § 51-15-01, *et seq.*); Oklahoma (Okla. Stat. tit. 15, § 751, *et seq.*); Oregon (Or. Rev. Stat. § 646.605, *et seq.*); Rhode Island (R.I. Gen. Laws § 6-13.1-1, *et seq.*); South Dakota (S.D. Code Laws § 37-24-1, *et seq.*); Texas (Tex. Bus. & Com. Code § 17.41, *et seq.*); Virginia (VA Code § 59.1-196, *et seq.*); Vermont (Vt. Stat. tit. 9, § 2451, *et seq.*); Washington (Wash. Rev. Code § 19.86.010, *et seq.*); West Virginia (W. Va. Code § 46A-6-101, *et seq.*); and Wisconsin (Wis. Stat. § 100.18, *et seq.*).

because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred while he resided in this judicial district. Venue is also proper under 18 U.S.C. § 1965(a) because Defendant transacts substantial business in this District.

PARTIES

17. Plaintiff Ray Padilla resides in Cook County, Illinois. In or around March 2011, Plaintiff Padilla was exposed to and saw Defendant's representations by reading the front, back and sides of the Kirkland Glucosamine and MSM label at a Costco store in Chicago, Illinois. He paid approximately \$25 for the bottle of Kirkland Glucosamine and MSM. The Kirkland product Plaintiff purchased was not proven to and thus could not provide the represented health benefits Defendant represented it would. Had Plaintiff known the truth about Defendant's misrepresentations and omissions, including that the scientific evidence demonstrated that these products were not effective as represented by Defendant and that Defendant did not possess competent scientific evidence to support the representations that it made about these Products, Plaintiff would not have purchased the Kirkland Glucosamine products.

18. Defendant Costco Wholesale Inc. is a public corporation incorporated under the laws of the state of Washington. Defendant's corporate headquarters is located at 999 Lake Drive, Issaquah, WA 98027. Defendant distributes, markets, and sells the Kirkland Glucosamine products to tens of thousands of consumers in Illinois and throughout the United States.

FACTUAL ALLEGATIONS

The Kirkland Glucosamine Products

19. Since 2001, Costco has distributed, marketed, and sold the Kirkland Signature[™] line of dietary supplements. These products include: (1) Kirkland

Signature™ Extra Strength Glucosamine/Chondroitin Sulfate; and (2) Kirkland Signature™ Extra Strength Glucosamine HCL and MSM.

20. The Kirkland Glucosamine products are sold online and in Costco stores nationwide. The following are screen shots of the Kirkland Glucosamine products:



21. Since the Products' launch, Costco has consistently conveyed the message to consumers throughout Illinois that the Kirkland Glucosamine products, with their "extra strength" formulas are clinically proven to deliver "optimum mobility" and will protect and build cartilage. Defendant's renewal and rejuvenation representations are false, misleading and deceptive.

22. Defendant represents that the claimed health benefits are achieved through the combination of ingredients in the Products. The primary active ingredient in both Kirkland Glucosamine products is glucosamine hydrochloride. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. The Products' labeling and packaging states the benefits associated with taking glucosamine hydrochloride: "Glucosamine is a basic building block for cartilage, synovial fluid and other connective tissues, which are needed for healthy structure and function of joints." There is no competent and reliable scientific evidence that taking glucosamine—let alone through oral administration—results in the body metabolizing it

into something that builds cartilage or improves joint structure or function. In fact, clinical cause and effect studies have found no causative link between glucosamine hydrochloride supplementation and joint renewal or rejuvenation or the relief of the two major symptoms of arthritis.

23. The chondroitin sulfate in Kirkland Glucosamine Chondroitin, is a complex carbohydrate found in the body's connective tissues. On the Product's labeling and packaging, Defendant represents that chondroitin sulfate "protects existing cartilage and serves as a building block for healthy new cartilage." There is no competent and reliable scientific evidence that taking chondroitin—let alone through oral administration—results in the body metabolizing it into something that assists in building joint cartilage. Clinical cause and effect studies have found no causative link between chondroitin supplementation and joint renewal or rejuvenation or the relief of the two major symptoms of arthritis.

24. The Methylsulfonylmethane ("MSM") found in Kirkland Glucosamine and MSM products is an organic sulfur compound found in fruits, corn, tomatoes, tea, coffee, and milk. On the Product's labeling and packaging, Defendant claims that MSM "is a necessary component that works in conjunction with Glucosamine to provide the building blocks of collagen, an important component of healthy joints and connective tissue. Clinical research shows MSM increases glucosamine's effectiveness." There is no competent and reliable scientific evidence that taking MSM—let alone through oral administration—results in the body metabolizing it into something that builds cartilage or improves joint structure or function, or makes glucosamine work more effectively. Clinical cause and effect studies have found no causative link between MSM supplementation and joint renewal or rejuvenation or the relief of the two major symptoms of arthritis.

25. In fact, numerous clinical cause and effect studies have found no causative link between any of the primary active ingredients in the Kirkland Glucosamine products

alone, or in combination, and joint renewal and rejuvenation. Nevertheless, Defendant without any scientifically valid confirmation that Kirkland Glucosamine is an effective joint treatment—let alone an effective treatment for *all* joints in the human body, for adults of *all* ages—prominently claims on the Products’ packaging and labeling that Kirkland Glucosamine, with its “extra strength” formula, will “deliver” “optimum joint mobility”, rebuild cartilage and improve joint function. Front and side shots of the two Kirkland Glucosamine product labels appear as follows

